

No. 22 of 1940 (4)

IN THE HIGH COURT OF AUSTRALIA.

Hume Pipe Company (Australia)
Limited

v.

Monier Industries Limited
(re application No. 102892)

REASONS FOR JUDGMENT.

Judgment delivered at Melbourne
on 8th November 1940

re Application No. 102892 by

Monier Industries Ltd.

HUME PIPE COMPANY (AUSTRALIA) LTD.

v.

MONIER INDUSTRIES LIMITED

Order :

Appeal allowed with costs. Decision of
Deputy Commissioner of Patents set aside and in lieu thereof
opposition upheld with costs to the opponent and application
for letters patent dismissed.

HUME PIPE COMPANY (AUSTRALIA) LIMITED

AND

MONIER INDUSTRIES LIMITED.

JUDGMENT.

RICH A.C.J.

HUME PIPE COMPANY (AUSTRALIA) LIMITED

V.

MONIER INDUSTRIES LIMITED.

JUDGMENT.

RICH A.C.J.

In the matter of the application No 102,892 for Letters Patent the crux of the decision of the Deputy Commissioner is that he was not sufficiently satisfied that the feature of "multiple springs disposed" in opposition to one another so as to place the vibrating table in a kind of resilient balance did not give novelty to the combination. Whatever may be the truth in respect of this supposed feature of the invention I am clearly of opinion that it is not distinctly made the subject of any claim nor properly embodied in any claim and that in the body of the specification only the most cloudy account of it is to be found. In these circumstances I am unable to uphold the decision of the Deputy Commissioner.

In my opinion the appeal should be allowed, the decision of the Deputy Commissioner discharged and the application for a patent refused. The respondent company should pay the costs of the ^{of} appeal and the application before the Deputy Commissioner.

HUME PIPE COMPANY (AUSTRALIA) LTD. V MONIER INDUSTRIES LTD.

JUDGMENT.

STARKE J.

The respondent, in December 1936, made application No. 102,892 for the grant of Letters Patent for an improved machine for concussionally vibrating concrete articles for the consolidating of the concrete during the setting thereof. The application was opposed by the ap^{pl}licant on the ground that the invention was not novel. The Deputy Commissioner of Patents determined that Letters Patent should issue, whereupon the appellant appealed to this Court against his determination.

The invention, according to the Complete Specification, related to machines for the concussional vibration of moulded articles made from concrete such as concrete pipes whilst the articles were in the mould and prior to the final setting of the concrete. The invention is sufficiently described in the first claim as follows:- "A machine for concussionally vibrating concrete articles constituted of a table of two main side frames and cross members, said table being adapted to float on a sole plate and guided to move longitudinally, a cam follower on one of said cross members juxtaposed a cam on a shaft on a stationary frame, an anchor frame between said side frames, springs connecting said anchor frame with said table and means to vary the pressure on one of said springs for the purposes set forth". In one arrangement of the machine, the anchor frame, disposed between the side frames, has springs at each end thereof. In this arrangement of the machine, the rotation of the cam deals concussional blows to the cam follower and such blows are transmitted to the reciprocatory table and cause it to be knocked longitudinally against the resistance which tends to maintain the table thrust against the cam whilst the spring at the other end opposes such thrust. In another arrangement, the spring-holding arrangement is modified so that the spring attached to a rod at one end is made fast in the anchor frame

and the spring at the other end is on the opposite side of the cross member whereby the springs reinforce each other.

In April of 1936 a machine for concussionally vibrating concrete articles for the consolidation of the concrete during the setting thereof was constructed^{by the appellant} and put in operation in Brisbane, where it was inspected by the Managing Director of the respondent. In December of 1936 three similar machines were constructed by the appellant on the order of the respondent and delivered to it. The appellant filed evidence in the Commissioner's Office to the effect that these machines were constructed in accordance with the complete specification and drawings of patent application No. 101,202. The specification and drawings were not published in the Commonwealth before the date of the respondent's application and could not therefore be relied upon as a paper anticipation of the invention claimed by the respondent. So the appellant's case is based upon the prior construction and use of the machines already mentioned.

The Deputy Commissioner said the evidence was clear that a machine, apparently for moulding concrete pipes was made and delivered to the Managing Director of the respondent but that it did not decisively show to his satisfaction that the machine was substantially the same as that described and illustrated in the Commonwealth Specification No. 101,202 and as a consequence that he was not prepared to conclude that a machine was substantially the same as that disclosed in the specification. But there is no doubt, on the evidence, that the machines mentioned comprised a solid foundation on which was supported a carriage or table, capable of being jolted back and forward longitudinally. The jolting or concussion motion was imparted by means of cams operable against the carriage or table, springs were provided at one end of the machine for returning the carriage, stop blocks for jolting the carriage in its return movement, and means for varying the pressure on the springs. The

machines actually ~~described~~^{delivered} had, I gather, two cams, but a single cam might obviously be ~~wide~~^{used},

It is thus apparent that the respondent's machine for the concussion vibration of moulded articles was derived substantially from the machines supplied to it by the appellant. Indeed, the Managing Director of the respondent deposes that the machines supplied to it failed, that he had to devise means whereby its contracts could be completed, and that as a result of such devising the machine the subject of its application for a patent (No. 102,892) was produced at the respondent's works. The machines of the appellant and the respondent are so alike that only two features require notice. The anchor frame, which is rigidly fixed to the sole plate or stationary frame and the springs so disposed between it and the table, ~~serve~~^{contribute} to urge the table thrust against the cam whilst in the appellant's machine a spring or springs are disposed on the stationary frame for the same purpose. The difference is but a mechanical variation of the arrangement of the machine and does not ~~involve~~^{constitute} any new combination. The spring holding arrangement or what has been termed the multiple spring arrangement. One of the elements of the respondent's first claim is springs connecting the said anchor frame with the table. According to the specification, the springs may be so disposed as to operate in opposition to one another or to reinforce each other. In the appellant's machine, a single cam or two or more cams may be used which would involve corresponding springs. The springs in machines constructed by the appellant and supplied to the respondent operate in precisely the same manner and for the same purpose as the reinforcing springs in the respondent's machine described in the respondent's complete specification and covered by claim 1. Even if the springs were limited to multiple springs operating in opposition to each other, that does not involve any new combination. Equilibrium of tension, was the object, so it was said at the

Bar, of the multiple springs, but even so a more skilful and efficient mode of arranging the springs, once the idea is suggested, is but a mechanical variation of the arrangement of the machine, and not so far outside and removed from the arrangement of the appellant's machine that it constitutes a new combination or invention.

The second and third claims in the respondent's specification are tied to the first claim and are equally wanting in novelty. The fourth claim is for an arrangement that is substantially the same as that of the appellant's machine. The fifth claim, referred to as an omnibus claim, adds nothing to and stands in no better position than the first claim.

The appeal should be allowed, the decision of the Deputy Commissioner reversed, and the application No. 102,892 for Letters Patent refused.

re Application No. 102892 by
Monier Industries Ltd.

HUME PIPE COMPANY (AUSTRALIA) LTD.

v.

MONIER INDUSTRIES LIMITED

JUDGMENT

DIXON J.

RE Application No. 102892 by Monier Industries Ltd.

HUME PIPE COMPANY (AUSTRALIA) LTD.

v.

MONIER INDUSTRIES LTD.

Notwithstanding the view to the contrary of the Deputy Commissioner of Patents, I think that it must be taken as established that, before the application now in question was filed, machines constructed substantially in accordance with the specification in application No. 101202 and the drawings annexed thereto were in use and available to the public.

The question is whether ^{any} ~~a~~ ^{can} doubt exists that those machines amount to a prior disclosure of the applicant's

alleged invention²_{a doubt} of sufficient strength to justify a dismissal
of the opposition made on the ground of want of novelty.

In my opinion no such doubt exists.

The two machines appear to me to exhibit no
distinction possessing any real substance, with the possible
exception of the introduction into the applicant's form of
construction of a second spring operating against the first.
This feature was relied upon by counsel in support of the
decision of the Deputy Commissioner of Patents. But an
examination of the text of the specification and in particular
of the claims and of the drawing in figure four shows that the
second or balancing spring does not form a necessary feature of

the invention set up. Further I do not think that it does more than give resilience or balance to the moving frame or table carrying the revolving drums or wheels on which the mould rotates. It does not change the mechanical operation of the pre-existing device, which depends on the revolutions of a cam wheel, a cam follower and a spring to bring back the table or frame and keep the cam follower in contact with the cam wheel. The nature of what is disclosed in and claimed by the specification is not such as to call upon us to give the applicant an opportunity of applying for an amendment. In my opinion the appeal should be allowed and the decision of the Deputy Commissioner of Patents

should be set aside and in lieu thereof the opposition should
be upheld and the application for letters patent refused.