

IN THE HIGH COURT OF AUSTRALIA.

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V.

In the Matter of Letters Patent

No. 6125/27 granted to

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Daniel Latham.

*Original*

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REASONS FOR JUDGMENT.

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Judgment delivered at Melbourne

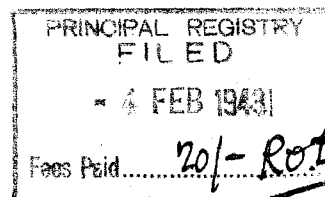
on 11th November, 1942.

IN THE MATTER of the Patents Act 1903-  
1935

- a n d -

IN THE MATTER of a Petition by DANIEL  
LATHAM for an extension of the term of  
Letters Patent of the Commonwealth of  
Australia Numbered 6125/27 dated the 24th  
February 1927 for "An improved Vyce."

O R D E R



ANGUS A. SINCLAIR  
465 Collins St.  
Melbourne.  
Solicitor for the Petitioner.

IN THE HIGH COURT )  
 )  
OF AUSTRALIA )

IN THE MATTER of the Patents Act 1903-1935

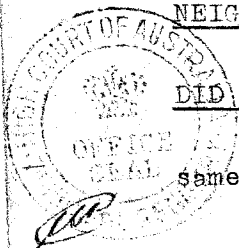
- a n d -

IN THE MATTER of a Petition by DANIEL LATHAM for an extension of the term of Letters Patent of the Commonwealth of Australia Numbered 6125/27 bearing date the 24th day of February 1927 for the invention of "An improved Vyce."

Before His Honour Mr. Justice Starke

Wednesday the eleventh day of November 1942.

The Petition of DANIEL LATHAM coming on for hearing before this Court on the 26th day of October 1942 UPON HEARING Mr. Gunson of Counsel for the Petitioner and Mr. Dean of Counsel for the Commissioner of Patents AND UPON READING the Petition herein dated the 3rd day of August 1942 and the several Affidavits of DANIEL LATHAM the Petitioner sworn and filed herein and the Affidavits of NORMAN LESLIE MARTIN ARTHUR GEORGE LLOYD NEIGHBOUR LAURENCE FRANCES MORONEY JOSHUA REGINALD RILEY ROBERT BOURKE BILLINGS ANTHONY JAMES CALLINAN and ANGUS ARCHIBALD SINCLAIR respectively sworn and filed herein and the respective exhibits thereto AND UPON HEARING the oral evidence of the said Petitioner and the deponent ARTHUR GEORGE LLOYD NEIGHBOUR taken upon their examination before this Court THIS COURT DID ORDER that the said Petition should stand for Judgment and the same standing for Judgment this day accordingly in the presence of



Counsel for the said Petitioner and the said Commissioner of Patents

THIS COURT DOTH ORDER that the term of the said Letters Patent No.

6125/27 be extended for three years from the date of the expiration

of the term of the said Letters Patent subject to the condition that

the Patentee grant licences upon reasonable terms and conditions to

all who may desire to make and use the said invention AND THIS COURT

DOETH FURTHER ORDER that an office copy of this Order be delivered to

the said Commissioner of Patents by leaving the same with a Clerk at

the office of the said Commissioner AND THIS COURT DOTH FURTHER ORDER

that the costs of the said Commissioner of Patents of this Petition be

taxed by the proper officer of this Court and when so taxed be paid by

the said Petitioner to the said Commissioner of Patents.

BY THE COURT,



*A. Doherty*

DEPUTY REGISTRAR.

LATHAM'S PATENT.

ORDER

Order that the Letters Patent No. 6125 of the year 1927 granted to Daniel Latham be extended for a term of three years from the expiration of the said Letters Patent subject to the condition that the patentee grant licenses to all who desire to make use of the protected invention on reasonable terms and conditions.

Order that an office copy of this order be delivered to the Commissioner of Patents by leaving the same with a clerk at the office of the said Commissioner.

Order patentee Daniel Latham to pay the costs of the Commissioner of Patents.

LATHAM'S PATENT

JUDGMENT

STARKE J.

Petition presented on the 3rd August 1942 for the extension of Letters Patent No. 6125/1927 which was granted on the 24th February 1927 for an improved vyce.

A vyce or vice is a well known contrivance or "tool" composed of two jaws, opened and closed by means of a screw, which grip and hold a piece of work in position while it is being filed, sawn or otherwise operated upon\*. Murray's New English Dictionary, "Vice". According to the patentee the type of vice in use at the date of his patent disposed of the gripping jaws at right angles to the bench to which the vice was fitted, with the result that the work when held in the jaws and disposed perpendicularly was limited to the distance from the top face of the jaws to the slider beneath them.

The improved vice the subject of the Letters Patent above mentioned off set the gripping jaws so as to allow the work held therein to be adjusted vertically as well as at an angle in the vice jaws without obstruction or limit of adjustment.

To justify the extension of a patent the Court must be satisfied:-

1. That the invention is one of considerable merit and utility.
2. That the patentee has been inadequately remunerated.
3. That the inadequacy of remuneration was not due to any lack of effort on his part or those who have held the patent.

The petition in this case was not based upon any war loss (Patents Act S. 84(6)), indeed the royalties received by the patentee have increased since the outbreak of war. The invention is not of a very high order of merit; it is not a great invention. But nevertheless it has merit higher than the ordinary merit that would sustain a patent. Also the invention is undoubtedly useful. But whether it has that "large value to the public which alone" justifies the extension of a patent is another matter. The utility of the invention in relation to the public is "an even more important factor than the inventiveness or skill shown in making the invention". Robinson's Patent 25 C.L.R. 116 at p. 121-2; Trantom's Patent 34 R.P.C. 28 at p. 36; Maschinenfabrik Augsburg-Nurnberg A.G. 47 R.P.C. 193 at 211.

As I follow the evidence about 8000 of the improved vices have been sold in 16 years, which does not suggest any considerable benefit to the public or much interest in the invention. Various excuses are offered for this state of affairs, which I need not discuss. Since the outbreak of war interest in, and the use of, the "improved vice" has much increased. An engineer of skill and experience (Mr. A.L.C. Neighbour), however, gave evidence, which I accept, that the invention is of considerable utility in the workshops; especially since the outbreak of war when it is important that work should be done speedily and efficiently. But for this evidence I doubt whether I should have regarded the invention as of any large value or special benefit to the public.

The remuneration of the patentee from his invention has not been large. He has received to the end of October 1942 the sum of £1485 in royalties, and claims to have expended £464 of which about £124 is but an estimate of the value of his services in preparing plans of his invention and loss of time in interviewing purchasers of his improved vices which had developed faults or weakness in use. And the manufacturers of his vice to whom the patentee gave an exclusive license which has now been released,

estimate their profits at £703, but their accounts are not very satisfactory.

Having regard to the merits and utility of the invention in relation to the public, the profits from the invention have been small and, in my opinion, the patentee has not been adequately remunerated by the patent. This inadequacy is not due to any want of diligence on his part or that of his licensees in pushing the invention. The patentee was not a man of means. He thus had difficulty in finding money to push the invention. Lack of interest on the part of engineers and others in his invention and also faulty workmanship on the part of an early licensee, now out of the business, together operated against the use of the patentee's vice. But that want of interest and prejudice from faulty workmanship has, since the outbreak of war, been overcome and the patentee's vice is now in good and growing demand. But the nature and merit of the invention is not such that I can, or should, order any greater extension of the Letters Patent than 3 years which on recent figures should give the patentee £200 a year or thereabouts and I hope more in royalties.

The petitioner will pay the costs of the Commissioner of Patents.