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IN THE HIGH COURT OF AUSTRALIA

NEW SOUTH WALES REGISTRY

No. 32 of 1942.

THE FAULTLESS MANUFACTURING COMPANY

Appellant

v.

THE COMMISSIONER OF PATENTS.

Respondent.

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REASONS FOR JUDGMENT.

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23.11.1942

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IN THE HIGH COURT OF AUSTRALIA

NEW SOUTH WALES REGISTRY

No. 32 of 1942

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IN THE MATTER of the Patents Act  
1903-1935

AND IN THE MATTER of an applica-  
tion for Letters Patent Number  
1734/41 by The Faultless Manufac-  
turing Company for an invention  
entitled "Improvements in or re-  
lating to garment bands"

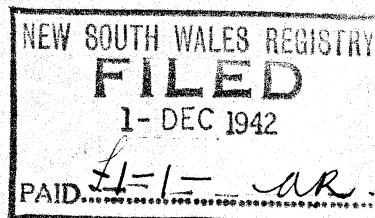
AND IN THE MATTER of an appeal from  
a decision by the Deputy Commis-  
sioner of Patents under the  
provisions of Section 46 of the  
Patents Act 1903-1935

THE FAULTLESS MANUFAC-  
TURING COMPANY

V

ORDER

THE COMMISSIONER OF  
PATENTS



--- oOo ---

T. J. Purcell  
Solicitor  
66 King Street  
Sydney

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IN THE HIGH COURT OF AUSTRALIA)  
NEW SOUTH WALES REGISTRY

No. 32 of 1942

IN THE MATTER of the Patents Act  
1903-1935

AND IN THE MATTER of an application for  
Letters Patent Number 1734/41 by The  
Faultless Manufacturing Company f o r  
an invention entitled "Improvements in  
or relating to garment bands"

AND IN THE MATTER of an appeal from a  
decision by the Deputy Commissioner of  
Patents under the provisions of Section  
46 of the Patents Act 1903-1935

BETWEEN

THE FAULTLESS MANUFACTURING COMPANY

Appellant

A N D

THE COMMISSIONER OF PATENTS

Respondent

BEFORE THEIR HONOURS THE CHIEF JUSTICE, ~~SIR JOHN LATHAM,~~

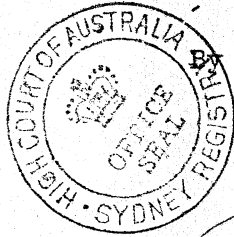
MR. JUSTICE ~~McTIERNAN,~~ a n d

MR. JUSTICE ~~WILLIAMS~~

MONDAY, the TWENTY-THIRD DAY OF NOVEMBER, ONE THOUSAND  
NINE HUNDRED AND FORTY-TWO.

WHEREAS by application dated the twenty-sixth day of April one  
thousand nine hundred and forty-one the abovenamed Appellant applied  
for Letters Patent for an invention entitled "Improvements in or  
relating to garment bands" AND WHEREAS on the Twelfth day of  
August one thousand nine hundred and forty-two the Deputy Commissioner  
of Patents did by his decision of that date refuse to grant Letters  
Patent to the said Appellant AND WHEREAS on the ~~first~~ <sup>second</sup> day of  
September one thousand nine hundred and forty-two the Appellant  
filed a Notice of Appeal in this Court against the decision of the  
said Commissioner of Patents AND WHEREAS the Appeal came on to  
be heard before this Court on the Twenty-third day of November o n e  
thousand nine hundred and forty-two WHEREUPON AND UPON READING

the copies of the documents transmitted by the said Commissioner to this Court AND UPON HEARING what was alleged by Mr. F.W. Kitto of Counsel for the Appellant and by Mr. Hooke of Counsel for the Respondent THIS COURT DID ORDER that this Appeal be and the same is hereby dismissed AND THIS COURT DOETH FURTHER ORDER that it be referred to the proper officer of this Court to tax and certify the costs of the Respondent of this Appeal and that such costs when so taxed and allowed be paid by the Appellant to the Crown Solicitor for the Commonwealth the Respondent's solicitor.



By the Court

*J. Hardman*  
DISTRICT REGISTRAR

IN THE MATTER OF

The PATENTS ACT, 1903 - 1935

- and -

IN THE MATTER OF

An Application for Letters Patent  
Number 1734/41 by

THE FAULTLESS MANUFACTURING COMPANY  
for an invention entitled "Improvements  
in or relating to garment bands".

- and -

IN THE MATTER OF

A decision by the Deputy Commissioner  
of Patents under the provisions of  
Section 46 of the Patents Act 1903 -  
1935 refusing such Patent.

BETWEEN

THE FAULTLESS MANUFACTURING COMPANY  
Appellant,

- and -

THE COMMISSIONER OF PATENTS  
Respondent.

BEFORE THE FULL COURT CONSTITUTED BY -

SIR JOHN LATHAM, CHIEF JUSTICE }  
MR. JUSTICE McTIERNAN }  
MR. JUSTICE WILLIAMS }

SITTING AT SYDNEY, ON THE 23RD NOVEMBER, 1942 AT 10.30. A.M.

LATHAM C.J.: This is an appeal under Section 47 of the Patents Act from a decision of the Deputy Commissioner refusing to accept an application and specification of a patent. The Examiner in discharge of his functions under Section 41 reported that the invention in his opinion was not novel, and the Deputy Commissioner upheld that decision of the Examiner and rejected the application.

I agree with what has been said by Mr. Kitto, that at this stage an invention should not be rejected unless the case is clear and obvious. The subject-matter of the alleged invention is improvements in respect of garment bands, such bands as support knickers, trousers, bloomers and the like. It is common knowledge that they may be supported by elastic bands. The specification which came under consideration in the present case related to means and methods of attaching to or incorporating in a garment an elastic

band to hold it in position. The applicant amended its specification so that the claim is now as follows:-

"A garment band comprising a strip of sheet rubber enclosed in a sheath formed by a down-folded end margin of the garment body and an up-folded edge portion of said margin, said strip being secured within said sheet and said folded garment portions being secured in sheath formation solely by a double row of stitching, the entirety of which passes through said up-folded edge portion and through said strip adjacent the edge thereof nearest the body of the garment".

That is a claim for fixing within a fold or hem of a garment a strip of sheet rubber to act as a support to the garment. The particular point of the claim is that the sheet rubber, not moving loosely within the sheath or hem or tube, is secured in a particular way. The method of securing it is by a double row of stitching, the entirety of which passes through the hem, and therefore through the fabric of the garment in two places, and also through the rubber strip. In the case of support for a pair of knickers the result would be that the sheet rubber strip would be enclosed in a hem and held in position by a double row of stitching at the bottom of the hem.

The anticipations which are referred to in the decision of the Commissioner are three. The first of them - specification No. 4460/26 - appears to be directed particularly to avoiding the effect of breaks in fabric materials used for the purpose of bands in garments. The idea of the invention is to put sheet rubber instead of fabric woven with rubber filaments, which were liable to break, and to stitch the bands into position. Another specification is No. 17338/34, to which I will refer more fully in a moment, and then there is a third specification in 1938, No. 110640. This discloses the idea of a hem on a garment, the placing of sheet rubber in it and a plurality of rows of stitching. There is in that case no question of a free edge.

The applicant contends that the novelty of his invention consists in the double row of stitching, first in it being a double row and secondly in it being positioned at an edge of the strip nearest the body of the garment so as to leave in practice the upper edge free and therefore readily adjustable to movements and tensions and distensions of the body.

It has not been argued - as I have followed the argument - that the use of a double row instead of a single row of stitching,

where it is desired to hold rubber in position without tearing, is in itself a patentable invention. The argument has proceeded upon the position of the double row of stitching, and the question which arises is whether that has been anticipated by specification No. 17338/34.

The Commissioner has decided that it was so anticipated and has said in his decision that in that specification "it is known to enclose a flat strip of sheet rubber in the outer margin of a garment folded down around the strip and partly up between the strip and the garment and to anchor the rubber to both the enfolding margin and the garment proper by stretchable stitching passed there-through. It is also shown, that although it is preferred to position this stitching at both edges of the rubber, it is known to position it solely adjacent the edge nearest the body of the garment (Col. 3 lines 19 - 21), leaving the upper edge of the rubber unattached".

If that is a true description of the specification it appears to me to be quite fatal to the application because then it would be clear that the alleged invention had been anticipated. When one refers to the specification one finds that there is a description of a row of stitches passing through a strip of sheet rubber and the sheath to enclose the sheet. That normally would be - taking knickers or bloomers - at the lower edge of the hem, that is to say, adjacent to the body of the garment. Preferably however, the specification goes on to say, two rows of stitching are used and this stitching may be made at substantially the same time.

In my opinion there is there a clear statement that a garment band may be held in position by being fixed by stitching through the up-folded edge portion of the garment and through the strip of sheet rubber adjacent to the edge thereof nearest the body of the garment. That is the plain meaning of the statement. It is true that any particular advantages which may be gained by the adoption of this method of construction are not pointed out, but an invention may not be granted because it is found that something known and already disclosed in a prior specification is discovered to have a particular advantage.

In my opinion the decision of the Commissioner is right and should be affirmed for the reasons which I have stated.