

ORIGINAL 17/ (20)
IN THE HIGH COURT OF AUSTRALIA.

APPLICATION OF DRAEGER FRERES AND
~~SPICERS & DETMOLD LTD. FOR~~
EXTENSION OF LETTERS PATENT
NUMBER 10862/33.

V.

ORIGINAL

REASONS FOR JUDGMENT.

Delivered at SYDNEY.

on Friday, 16th April, 1948.

APPLICATION OF DRAEGER FRERES AND SPICERS & DETMOLD LTD.

FOR EXTENSION OF LETTERS PATENT NUMBER 10862/33

JUDGEMENT

STARKE J.

This is an application by way of Originating Summons for the extension of Letters Patent 10862/33 for "Improvements in binding arrangements for sheets or leaflets and applications of the same" granted to Draeger Freres, a French company carrying on business as Printers.

Ltd.
Spicers & Detmold is an Australian company which has an agreement dated 5th March 1947 that I shall call a conditional purchase of the rights conferred by the Letters Patent. By this agreement Draeger Freres promised to sell the Letters Patent "against payment of a sum -- £250" whereupon the "rights to/patent and authority to work same" were ~~then~~ given to Spicer & Detmold Ltd. The sale becomes definite "when the extension of period of this present patent for 4 years or 6 years or otherwise has been decided by the Australian Patent Office". "Draeger Freres will then finalize/definitely the patent to the Company Spicer & Detmold Ltd. against payment of a second and final amount of £250". "In the event of the extension of the patent not being granted Draeger Freres will keep the first sum of £250 and Spicer & Detmold Ltd. will be authorised to use the patent until its normal expiration"

The Letters Patent expired on the 19th January 1948.

The Originating Summons is founded upon Sec. 84(6) of the Patents Act 1903-1935.

The invention is simple enough and, doubtless, is useful. It has been exploited with success in France and on a lesser scale in Great Britain and other countries but the invention has never been used in Australia.

The cost of the necessary plant for making the binding arrangement, the subject of the invention, is comparatively small.

Correspondence took place during the years 1936, 1937, 1938 and 1939 inquiring whether Draeger Freres were prepared to appoint agents or grant licenses in respect of the Australian patent rights or to dispose of those rights. Draeger Freres replied that it was their intention to sell the patent and named at different times £1,200 and £1,250 as the purchase price. The price was considered too high and no business resulted. But Draeger Freres made no effort to manufacture the binding arrangement in Australia or to introduce it to or to exploit the invention on the Australian market.

All that interested Draeger Freres, apparently, was a sale of the Australian rights in the invention. It is possibly true that hostilities prejudiced the sale of those rights and that the rights were not worth more than £250 in March of 1947 when the patent had less than a year to run unless extended.

But I am not prepared to extend the term of the Letters Patent so that Draeger Freres may receive an additional sum of £250 for an invention which that firm has neither used nor exploited in Australia and Spicers & Detmold Ltd. obtain a monopoly in the invention for an extended period for its own profit, without any apparent advantage to the Australian public.

The application for an extension of the patent is refused and the Originating Summons dismissed.

The applicants will pay the Commissioner of Patents his costs of and occasioned by the Originating Summons.