

678a N. 31 of 1947 (6)

IN THE HIGH COURT OF AUSTRALIA

IN THE MATTER OF LETTERS PATENT
NO ~~12590/33~~ GRANTED TO CHARLES
AUGUST KAUFMAN.

V.

ORIGINAL

REASONS FOR JUDGMENT

Judgment delivered at SYDNEY.

on FRIDAY, 16th DECEMBER, 1949

In the matter of:

THE PATENTS ACT 1903 - 1946.

And in the matter of:

AUSTRALIAN LETTERS PATENT NO. 12590/33 GRANTED

TO CHARLES AUGUST KAUFMAN.

JUDGMENT.

WEBB J.

In the matter of:

THE PATENTS ACT 1903 - 1946.

And in the matter of:

AUSTRALIAN LETTERS PATENT NO. 12590/33 GRANTED

TO CHARLES AUGUST KAUFMAN.

JUDGMENT.

WEBB J.

This is an application by way of originating summons under Section 84(6) of the Patents Act that the term of the patent be extended on the ground of war loss. In my judgment to-day on a similar application in respect of Letters Patent 17139/34 granted to Electric and Musical Industries Limited the law is stated so far as applicable.

This is a convention patent granted on the 20th May 1932 and which therefore expired on the 20th May 1948. Originally the patent was granted in the United States. It relates to an improved method of knitting silk hosiery. It was devised to obviate the streaks, rings or banks in hosiery caused by the silk yarn being unavoidably subject to variations in the average thickness of the yarn. The essence of the invention is that instead of using one cone or bobbin of silk a plurality is provided, preferably an uneven number, with the result that all the yarns fed into the knitting machine do not run thick or thin in succeeding courses, and the inequalities are so distributed among the more perfect yarns that the variations are made less apparent. There is a number of related foreign patents. In the United States the court held that the patent was invalid and revoked it; the Canadian court did likewise. This was a result of a conflict declared under the American legislation following two applications dealing substantially with the same subject matter. Further the idea of a plurality of bobbins or cones had been put into practice in knitting mills in America, and it was successfully argued that no invention was involved in applying it to silk. There is no opposition to this extension in Australia although the licensees appear to be substantial / people.

people. They prefer to pay the royalties. Moreover the English patent has recently been extended for six years from September 1948. Royalties under the British Patent were in 1935, £2,580; in 1936 and 1937 £8,000 odd; in 1938 £13,000 odd; and in 1939 £16,000 odd; in 1940 £12,000 odd; in 1941 £800 odd; in 1943 £121; in 1944 £202; in 1945 £119; in 1946 £1,724; in 1947 £2,291; in 1948 £294.

No royalties have been received for the French patent since 1939. None had been received for the German, Italian or Spanish patents. A number of licenses to manufacturers was granted under the Australian patent. The Australian production for the period 30th June 1935 to 30th June 1939 was £25,000 odd. For the succeeding seven years, £9,153. In the two years and three months up to the end of 1948 it was £5,339. The war loss is assigned to the Government control and requisition of silk supplies, as well as labour problems. Production figures were in 1930 113,000 doz. pairs, in 1939 583,000 dozen pairs; in 1940 5,114 dozen pairs; in 1941 3,351 dozen pairs; in 1942 34,000 dozen pairs; in 1943/44 and 1945 no production; in 1946 13,000; in 1947 294,000; in 1948 344,000.

The royalty rates were greatly reduced in 1939 and, as counsel for the Commissioner submitted, they are not a satisfactory basis. Counsel for the applicant submitted that the two years before the war should be averaged and made the basis of estimated production during the war years, but counsel for the Commissioner suggested that the two pre-war years' production may have been stimulated by a heavy demand and hoarding in anticipation of the war. He suggested taking the average for four or five pre-war years, more particularly as nylons have become a serious post-war competitor and might have become one much sooner but for the war. I think that is so.

I have decided to grant an extension of four years and four months.

/ Order

Order that there be a re-grant of Letters Patent No. 12590/33 for the term of four years and four months from the expiration of the original patent, that is, from the 20th May 1948, subject to the condition that no action or other proceedings shall be commenced or prosecuted and no damage shall be recovered either in respect of any infringement of the patent which has taken place after the date of the expiration of the original patent and before the date of this order, or in respect of the sale, use or employment at any time hereafter of any article actually made in that period in accordance with the invention covered by the patent, and that the applicant pay the costs of the Commissioner.
