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IN THE HIGH COURT OF AUSTRALIA

IN THE MATTER OF LETTERS PATENT
NO. 4505/31 GRANTED TO PAUL
~~BEATTY REEVES.~~

F.

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:

LETTERS PATENT NO. 4505 GRANTED TO PAUL BEATTIE REEVES.

JUDGMENT.

WEBB J.

In the matter of:

THE PATENTS ACT 1903 - 1946

And in the matter of:

LETTERS PATENT NO. 4505/31 GRANTED TO PAUL BEATTIE REEVES.

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 No. 17139/34 granted to Electric and Musical Industries Limited I have set out briefly the law so far as applicable in these cases. I proceed now to deal with the facts. This is a convention patent relating to variable speed transmission. The invention enables a machine driven by an electric motor to be driven at a lesser speed by the same motor. It is claimed for it that the adjustment it enables to be made in the speed can be made with a minimum of trouble and with a maximum of result. The patent was granted on the 13th October 1931 and so expired on the 13th October 1947. Although the patent is in the name of Paul Beattie Reeves it has been treated by him as the property of The Reeves Pulley Company and has been at all material times exploited by the company. However any extension will have to be to Paul Beattie Reeves who has never assigned it to the company. There are four related foreign patents, i.e. in Canada, Germany, France and the United States. The United States patent was assigned to the Reeves Pulley Company. It expired in 1948 and has not been renewed. The Canadian Patent was also assigned to the company but it has never been exploited. The German patent was sold in August 1938 for 1,496 dollars which was paid to the company. The French patent expired in January 1947 but was extended. In October 1937 a license was granted to manufacture in France but the only royalties received were 21.83 dollars in 1938. No royalties have been received since the extension. Under the American patent sales steadily increased until 1939 when they reached 24,600 units. They dropped to

/ 16,000

16,000 in 1940 but increased to 31,800 in 1941. During the three years 1942 to 1944 sales were maintained at about pre-war level but increased considerably after the war. However, the war sales are attributed to advertising and to the acquisition of "standardised machinery accounts" in which a manufacturer of industrial machinery incorporates the speed control unit into his machines.

In December 1937 an exclusive license was granted to the Page Engineering Company Proprietary Limited of Melbourne to manufacture throughout Australia. This license was assigned by the applicant to the Reeves Pulley Company. It was necessary for manufacture under this license to instal plant, machinery and special jigs. Manufacture was commenced in 1938 but no royalties were received, because Page, the Director of the Page Company, and many of his staff enlisted, and because of the restrictions on the transmission of funds to America. In March 1946 after Page had been discharged royalties amounting to £166-11-0 were paid in respect of the period 1938 to 1945. During the war, in Page's absence on war service, his draughtsmen and best workmen were diverted to munitions production. At the same time the Ministry of Munitions required various types and sizes of variable speed transmissions and stated that if the Page Company could not supply them the Ministry would impress his patents and drawings and make the transmissions; but Page secured a competent foreman and a former employee to fulfill some of the Ministry's orders. However in five years of war only one hundred and twenty-five articles were made. The pre-war rate was sixteen per annum. The post-war rate was sixty-seven for nine months of 1946, one hundred and seven in 1947, one hundred and ninety-eight in 1948 and sixty for the first three months of 1949.

Counsel for the Commissioner suggested that one hundred units would be a reasonable estimate for the year 1939 and thereafter but that the high production in the post-war period may have been accounted for by arrears, as this trans-

mission apparatus was anxiously sought. He suggested an extended term of four and a half years. The applicant seeks four years and nine months. I think the application should be granted to the full extent. The applicant will pay the Commissioner's costs.

Order that there be a re-grant of Letters Patent 4505/31 for the term of four years and nine months from the expiration of the original patent, that is, from the 13th October 1947, 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.
