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IN THE HIGH COURT OF AUSTRALIA

IN THE MATTER OF LETTERS PATENT
NO. 12973/33 GRANTED TO ALEXANDER
SIMPSON.

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

LETTERS PATENT No. 12973/33 GRANTED TO

ALEXANDER SIMPSON.

JUDGMENT.

WEBB J.

IN THE MATTER OF :

THE PATENTS ACT 1903 - 1946.

AND IN THE MATTER OF :

LETTERS PATENT NO. 12973/33 GRANTED TO

ALEXANDER SIMPSON.

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 I have set out the law so far as I thought necessary. As to the facts; this is a convention patent which was granted on the 9th June 1932 and so expired on the 9th June 1948. The patent was granted to Alexander Simpson, but the application is made by Samuel Leonard Simpson, as the executor of Alexander Simpson, and by S. Simpson Limited, as assignee. The assignment was not registered until the 13th July 1939. S. Simpson Limited is now on the Register as owners of the patent.

The essential feature of the patent is that it provides an elastic element on the waist-band of sports trousers which keeps the trousers into the waist without stretching the waist-band itself. The elastic is inserted in the waist-band and is attached at each end to the waist-band allowing the waist-band & itself to pucker a little because the elastic is shorter than the length of waist-band it covers. Small rubber pads on the insider of the waist-band keep the shirt in position. There are several related foreign patents, but only in the United States has the article been manufactured, and then under license granted to a subsidiary company of the London Company. The United States royalties appear to have been received only during the war period.

Production figures are 1941/42 816 pairs; 1942/43 1675; 1943/44 5,418; 1944/45 10,000; 1945/46 18,000; 1946/47 33,000. It is suggested that the difficulty of obtaining cloth in England during the war was the reason why the license was granted to the American subsidiary. The total production under all foreign patents was in 1939 197,000; in 1940 139,000; in 1941 56,000; in 1943/44/45 no production; in 1946 5,000; in 1947 20,000; and in 1948 55,000. As regards foreign patents then, the war loss and the extent of it are clear from these figures. Australian sales were, in 1939 11,400; in 1940 7,000; in 1941 2,000, in 1942, 2,000; in 1943/44/45 and 1946 no sales; in 1947 2,000; and in 1948 2,000. War work, enlistment of staff and control of cloth and rubber consumption affected productions and sales.

As regards the absence of manufacture in Australia the patent is merely an adjunct to trousers which are all manufactured in England, with the exception of those made in America during the war.

The application is for an extension of five years.

Counsel for the Commissioner submitted that five years would be a suitable period, and as regards production in Australia, suggested that Section 87A of the Act provides sufficient protection to the Australian manufacturers and public.

The re-grant will be to S. Simpson Limited and be for five years from the expiry of the original patent, that is, from 9th June 1948; on the usual terms. The applicant will pay the Commissioner's costs.

Order that there be a re-grant of Letters Patent 12973/33 for the term of five years from the expiration of the original patent, that is, from the 9th June 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

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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.
