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IN THE HIGH COURT OF AUSTRALIA

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IN THE MATTER OF LETTERS PATENT  
NO. 17390/34 GRANTED TO FRITS JOHAN  
HOLMBERG.

V.

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ORIGINAL

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*Oral*  
REASONS FOR JUDGMENT

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*5/10 2/10*  
Judgment delivered at **SYDNEY.**  
on **THURSDAY, 16th NOVEMBER, 1950.**

IN THE MATTER OF LETTERS PATENT NO. 17390/34

GRANTED TO FRITS JOHAN HOLMBERG

JUDGMENT

(Oral)

FULLAGAR J.

IN THE MATTER OF LETTERS PATENT NO. 17390/34

GRANTED TO FRITS JOHAN HOLMBERG

JUDGMENT  
(ORAL)

FULLAGAR J.

This patent expired on 2nd May 1950. No profits have been realized from it from any source except Australia, although the invention has been patented in Great Britain and New Zealand. I think that loss due to the war has been established, and that the only question is whether the high figures of production and sale from 1947 onwards do not reflect what is sometimes called a "banked up demand". In other words, to quote Mr. Justice Tomlin, as he then was, in Higginson v. Arundel's Patent 44 R.P.C. 436, is this a case in which "what the war has taken away with the one hand, it has given back with the other"? The matter is of course incapable of proof one way or the other, but I think it fair to infer that the turnover would have been very substantial from about 1940 onwards if war had not occurred. I must have regard to post-war difficulties in obtaining labour and material. There is, I think, ground for thinking that the average over the ten years 1940-1950 would have been much higher if there had been no war. I think, however, that some allowance should be made for increased post-war building activity. The invention, though I do not pretend to have studied it closely and I am not in a position to express a concluded opinion on it, appears to be one of merit. On the whole, taking all the circumstances into consideration, I am of opinion that an extension for four years is reasonable in this case, and I will extend the term of the patent for four years from the date of expiry. The patent having expired, a re-grant will, of course, be necessary, and the order will take the form settled by Mr. Justice Dixon in the Celotex Case. The applicant must pay the Commissioner's costs.