

(14)

IN THE HIGH COURT OF AUSTRALIA

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IN THE MATTER OF LETTERS PATENT NO.  
14031/33 granted TO CARL JOHAN RIXEN  
AND IN THE MATTER OF AN APPLICATION  
BY POLYFOTO (INTERNATIONAL) LTD.

V.

ORIGINAL

*Oral.*

REASONS FOR JUDGMENT

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Judgment delivered at SYDNEY.

on THURSDAY, 16th NOVEMBER, 1950.

IN THE MATTER OF LETTERS PATENT NO. 1403/33

GRANTED TO CARL JOHAN RIXEN

AND

IN THE MATTER OF AN APPLICATION BY POLYFOTO

(INTERNATIONAL) LIMITED

JUDGMENT  
(ORAL)

FULLAGAR J.

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IN THE MATTER OF LETTERS PATENT NO. 1403/33

GRANTED TO CARL JOHAN RIXEN

AND

IN THE MATTER OF AN APPLICATION BY POLYFOTO

(INTERNATIONAL) LIMITED

JUDGMENT  
(ORAL)

FULLAGAR J.

The patent in this case was granted on 22nd August 1933 and therefore expired on 22nd August 1949. The present owner of the patent is Polyfoto (International) Limited. Another company, Polyfoto (England) Limited, owns the British patent for the same invention. The relations between the two companies are not made clear by the evidence, and it is merely stated that Polyfoto (England) Limited is an "allied company" of Polyfoto (International) Limited.

Patents for the invention were obtained in many countries, but the patent has not been exploited in any country except England, though the United States patent, after threatened litigation, was sold in 1943 for a sum just under £10,000. The invention relates to cameras, and it would appear that some 200 cameras had been manufactured in England between 1933 and 1940. From the use of these cameras what appear to be very large profits indeed were made in England during the war, profit in 1945 being no less than £71,720. No information is given as to the amount of capital invested. There is nothing to show that the large profits realized in England were not due wholly or very largely to war conditions. Indeed, paragraph 17 of Mr. Stoneham's affidavit seems to me studiously to avoid this by no means unimportant point. Having regard to the nature of the invention, it seems very likely that the presence in England of many members of the armed forces of many countries was very largely responsible for the success of

the invention in that country in the war years. The invention is one the success or failure of which is likely to depend on changeable popular tastes and habits and on skill and judgment in exploitation and advertisement. Between 1933 and 1940 no serious effort seems to have been made to exploit the invention in Australia. No information is given with regard to the position in England after 1945.

On the material before me I am not satisfied that loss or damage has been suffered in Australia by reason of the war in the relevant sense. I am strongly inclined to think that very substantial gains were made in England by reason of the war. If there was any loss or damage in Australia by reason of the war, I am not satisfied that this was not more than compensated by gains made in England by reason of the war. I am not prepared to grant an extension of the term of this patent.

The application is refused. The applicant must pay the Commissioner's costs.