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IN THE HIGH COURT OF AUSTRALIA

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PATTERSON

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V.

THE GENERAL ELECTRIC COMPANY  
LIMITED

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**REASONS FOR JUDGMENT**

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**ORIGINAL**

*Judgment delivered at* Melbourne,

*on* 17th May, 1951 (Thursday)

PATTERSON

v.

THE GENERAL ELECTRIC COMPANY LIMITED

JUDGMENT (ORAL)

DIXON J.  
WEBB J.  
KITTO J.

PATTERSON

v.

THE GENERAL ELECTRIC COMPANY LIMITED

JUDGMENT (ORAL)

DIXON J.

This is an appeal brought in pursuance of sec. 58 of the Patents Act from a decision of the Deputy Commissioner of Patents dismissing an opposition. The opposition under sec. 56 of the Patents Act was placed upon the grounds which appear in paragraphs (c), (e) and (f) of the section. The patent opposed was an invention patent which when granted took effect as from 1st November 1938. It was a patent obtained by the General Electric Company Limited, which is the respondent in this appeal. The invention which is protected by the patent relates to an arrangement of reflectors for the purpose of diffusing electric light and giving an indirect lighting effect together with a direct light. It is described as an invention for improvements in and relating to lighting fittings. The substance of the arrangement is to suspend from an electric light attachment into which the bulb itself fits a pear or cone-shaped reflector, the upper part of which is so treated as to diffuse the light and the lower part of which is clear. The bulb fits inside this pear or cone shaped reflector. The lower end of it has a lip. Another member of the arrangement consists in what is called a bowl, which is a bowl-shaped reflector which also is etched, as it is said, to provide a satin finish or other finish according to the diffusion required. That bowl has a circular aperture at the bottom and it fits over the first reflector before the reflector is attached to the electric lighting attachment and is held by the lip so that it is capable of reflecting upwards. The upper edge of the bowl has the same horizontal position as the upper edge of the clear part of the first member, the pear-shaped reflector.

The specification for this arrangement makes the following statements. It is said that the object of the invention is to provide a fitting of the kind specified which is in addition adapted for indirect lighting. In a lighting fitting of the kind specified, according to the invention, the globe is arranged to support a bowl reflector for indirect lighting and a portion of the globe is made clear or substantially clear whereby light rays from the light source may pass to the bowl reflector where they are reflected for indirect lighting purposes. The general description of the invention is that it relates to lighting fittings of the kind comprising a bell-shaped diffusing globe adapted so as to permit of unobstructed illumination of an area beneath the fitting and diffused illumination of the surrounding space. It will be seen that the two objects are stated and the method of their achievement is stated in the passages from the specification which I have read; that is, to project a clear illumination from the mouth of what I have described as the pear-shaped globe, which is described in the specification as the bell-shaped diffusing globe and otherwise to give a diffusion of indirect light reflected upwards.

The first claim of the specification claims a lighting fitting of the kind specified when the globe is arranged to support a bowl reflector for indirect lighting and that portion of the globe is made clear or substantially clear whereby light rays from the light source may pass to the said bowl reflector where they are reflected for indirect lighting purposes. It will be seen that this is a combination claim of which there are quite a number of ingredients or elements. It is probably sufficient for the purposes of this case to pick out from the combination the elements that it is for indirect lighting and that the bowl reflector is for that purpose, that the light rays are reflected for indirect lighting purposes and that only a portion of the globe is made clear.

Those elements I pick out because they appear to me to be critical in the consideration of the question of anticipation which is raised by paragraph (c) of sec. 56. In the citations made it is necessary to look for a disclosure of means of diffusing the light, means of reflecting it upwards and of holding the two members together in the manner that I have described.

The present appellant, who was the opponent before the Commissioner, relies on two patents which were granted, one taking effect as from 21st July 1937 and the other as from 31st July 1937. The distinction between these for present purposes is not very great and it is enough, I think, to take as the more favourable to the appellant the patent which takes effect as from 21st July 1937, No. 105,254. That discloses a method of reflecting light in various directions. The reflector which is described is suspended from a globe or other reflector which is placed in various ways round what is called the lighting source in the other specification, which simply means the bowl from which the light comes. The reflector is elaborately described and may take a variety of forms. It is, however, intended to project the light forward in whatever direction it is placed from the concave surface of what corresponds to the bowl in the specification of the patent in dispute. I shall not describe in greater detail the character of that reflector, but it is the main feature of the invention. In the diagrams which are given for that specification there is only one in which that reflector is so placed as to reflect upwards and thus give an indirect light. In that particular example the reflector is suspended from the electric fitting by either chains or cords or other attachments. The circular aperture which points downwards allows the light to come through directly; otherwise the light is reflected upwards. In all the other documents the reflector either points downwards or

in some other direction more or less, but according to the requirements of somebody who has a surface to be lit below and not above the electric fitting. In several of these instances the reflector is supported by the first reflector and it is said that it is for anybody to reverse the manner of support and then something very like the invention in dispute would be produced. But that in fact is not done. Further, there is no attempt in any part of specification No. 105,254 to deal with the problem of the diffusion of light or to make the diffusion of light the point of the invention.

When an objection is made that an invention has been patented in the Commonwealth on an application prior in date it is necessary for the opponent who relies upon it to show that the substance of the very invention has been published in the document the opponent relies upon. It is of course true that that principle must be applied with a little discrimination. If the differences lie in very obvious mechanical equivalents then it is true that the substance of the invention has been anticipated by the prior grant. In the present case, however, it appears that the prior specifications do not disclose the essential points of the combination claimed in the respondent's specification. They do not contain the essential point of the combination. It must be remembered that the invention in dispute is a combination invention. We are not at the moment concerned with subject matter. But the subject matter, if it exists, as it probably does, lies in the combination. Neither of the documents relied upon in support of the opposition is directed to the purpose of that combination. We are concerned only with what is disclosed by the documents as I have attempted to describe it. / We are ~~concerned~~ not, in relation to ground (c), concerned with any further matter and in my opinion the opponent fails to make out that ground.

He relied also on the grounds contained in sec. 56(e) and (f), namely that the invention is not novel or has

already been in possession of the public with the consent or allowance of the inventor and that the invention has been described in a book or other printed publication published in the Commonwealth before the date of the application or is otherwise in the possession of the public. Under those two heads he relied to some extent on what was disclosed in the specifications/<sup>to</sup>which I have already referred, and it is understandable, appearing in person as he did, that he should so rely upon them. But what we are concerned with is the existence of some disclosure of another description. Two matters of fact were relied upon. One, I think, is simply due to a mistake of the law. It appears from the material placed before the court that a blue print of the particular sketch was lodged with the Crown Crystal Glass Co. in Sydney on 15th September 1939 with a view to a manufacture in Australia and it is said that that is a date prior to the date of the application for No. 111,795, which is true enough. But it is a convention patent and the material date is 1st November 1938 and whatever that document contained it would not suffice to support the objection. The other matter relied upon is a little obscure but I am not satisfied that the sketch which forms the pivotal point of it was ever made public as required by law, if it is to form the basis of a ground of opposition. The decision of the Patents Commissioner on this point rested on several considerations, one of which was that it is quite consistent with all that is known that it was placed in the hands of a patent agent and that that would not amount to a public disclosure. He gave other reasons. For my part I am not satisfied that he was wrong in any of them. I am therefore of opinion that this appeal must be dismissed.

Webb J.: I agree.

Kitto J.: I agree.

#### ORDER

Appeal dismissed with costs.