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IN THE HIGH COURT OF AUSTRALIA

APPLICATION FOR EXTENSION OF
LETTERS PATENT NO. 21780/35
GRANTED TO ERNEST GABRIEL ZOUKRA.

V.

ORAL

REASONS FOR JUDGMENT

Judgment delivered at Sydney
on Monday, 28th May 1951.

APPLICATION FOR EXTENSION OF LETTERS PATENT

NO. 21780/35 GRANTED TO ERNEST GABRIEL ZOUKRA

JUDGMENT

WILLIAMS J.

APPLICATION FOR EXTENSION OF LETTERS PATENT
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JUDGMENT

WILLIAMS J.

This is an application under Section 84(6) of the Patents Act 1903-1950 to extend the term of letters patent No. 21780/35, dated 13th March 1935, on the ground that the patentee as such has suffered loss or damage on account of the recent hostilities. It is a case in which I need only consider the two requisites laid down by the section.

So far as the requisite of Mr. Zoukra not being a subject of a foreign State with which we were at war is concerned, it is quite clear that he is a British subject, so it all comes down to the question of what extension I should grant on account of this loss or damage.

I have no doubt that Mr. Zoukra is entitled to an extension, and an extension of a considerable term. I think the evidence establishes that he is in the first instance entitled to an extension in respect of the whole of the period of hostilities between September 1939 and September 1945 - that is six years.

The evidence also establishes that, since September 1945, Mr. Zoukra has been gravely handicapped in the manufacture of the patented apparatus, an improved sanitary closet, due to the shortage of caustic soda and of steel. But the difficulty in this case, as in every other such case, is to determine to what extent those shortages are due to the aftermath of the fighting and to what extent they are due to social, economic and industrial disturbances which, unfortunately, have greatly affected Australian production since the conclusion of hostilities.

The onus is on the applicant to prove to what extent he has suffered damage since September 1945 due to shortages of materials resulting from the hostilities themselves; in other words, due to the period required for the readjustment of industry

to peacetime conditions and not due to the other elements to which I have adverted.

I think Mr. Zoukora has shown in this case that, to some slight extent at any rate, his postwar difficulties have been due to the first of these causes and on that account I propose to allow an extra year.

I therefore extend the term of the letters patent by seven years. The letters patent have run out; they came to an end on 13th March 1951. There will therefore have to be a re-grant, and the re-grant will be in the same terms as the Order in the Gillette Case reported in 67 C.L.R. at 529; the re-grant, of course, to be from the date of the expiration of the term of the present letters patent.

The applicant must pay the costs of the Commissioner, including reserved costs if any.