

IN THE HIGH COURT OF AUSTRALIA

IN THE MATTER OF LETTERS PATENT
NOS. 112379, 112550 AND 112570
GRANTED TO E. I. DU PONT DE NEMOURS
& CO. AND ASSIGNED TO IMPERIAL
CHEMICAL INDUSTRIES LIMITED

V.

ORIGINAL

REASONS FOR JUDGMENT

Judgment delivered at MELBOURNE
on THURSDAY, 25TH OCTOBER, 1956.

IN THE MATTER OF LETTERS PATENT NOS.112379,
112550 and 112570 GRANTED TO E.I. DE PONT DE
NEMOURS & CO. AND ASSIGNED TO IMPERIAL CHEMICAL
INDUSTRIES LIMITED.

JUDGMENT

TAYLOR J.

IN THE MATTER OF LETTERS PATENT NOS. 112379,
112550 and 112570 GRANTED TO E. I. DE PONT DE
NEMOURS & CO. AND ASSIGNED TO IMPERIAL CHEMICAL
INDUSTRIES LIMITED.

JUDGMENT

At the conclusion of the hearing of this matter I had formed the view, notwithstanding the objections which had been raised, that the applicants had made out a case for an extension for a substantial period of the respective terms of the Letters Patent the subject of the application. The appropriate period of the extension, I thought, should be from four to five years in each case. I reserved the matter for consideration, however, first of all because it was suggested that it might be proper to make any regrants in a limited form and subject to an undertaking designed to ensure the granting of gratuitous licences in the event of British Nylon Spinners Limited being unable at any time to satisfy the local demand for goods manufactured under the patented processes, and secondly, because it was also suggested that I might express some final views upon questions which seemed to me to be, at the most, on the fringe of the case.

Upon consideration I am satisfied that the regrants should not be subject to any limitation or undertaking and, further, that it is not an appropriate case in which to deal with the questions referred to.

The evidence establishes to my satisfaction that the successive patentees suffered war loss which, when expressed in terms of time, amounted to a period somewhat in excess of five years. Other factors exist, however, which, at this stage, require this period to be discounted in some small measure. In all the circumstances I think that the appropriate period is five years and I direct that there be a regrant of each of the Letters Patent for that period computed, of course, from the date of their expiry. The regrant will be subject to conditions that no action or other proceedings shall be

commenced or prosecuted and that no damage shall be recovered either in respect of any infringement of any of the patents which has taken place after the date of the expiration of the original term 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 respective patents.

I direct the applicant to pay the Commissioner's costs of this application, including any reserved costs.