

CV 16K 7/0 21 of 1962

(8)

IN THE HIGH COURT OF AUSTRALIA

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SCRIBAL PROPRIETARY LIMITED AND  
STENMARK PROPRIETARY LIMITED

V.

HENRY GEORGE MARTIN

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REASONS FOR JUDGMENT

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ORIGINAL

Judgment delivered at MELBOURNE

on THURSDAY, 31ST OCTOBER 1963

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A. C. Brooks, Government Printer, Melbourne

G.7639/60

SCRIBAL PROPRIETARY LIMITED  
STENMARK PROPRIETARY LIMITED

v.

HENRY GEORGE MARTIN

JUDGMENT  
(ORAL)

WINDEYER J.

SCRIBAL PROPRIETARY LIMITED  
STENMARK PROPRIETARY LIMITED

v.

HENRY GEORGE MARTIN

In this case a notice of appeal was given by the opponents against the decision of the Commissioner, who disallowed their opposition to the grant of a patent. The appellants have now made it clear that they do not intend to proceed with their appeals. They have filed a notice of discontinuance. The authority for filing a notice of discontinuance is said to be Order 27 of the High Court Rules.

A difficulty arises however because, whether that Order be applicable or not, a discontinuance merely terminates the pending proceedings and is not necessarily a bar to subsequent proceedings. The Commissioner is not prepared, as the matter stands, to issue a patent. The question arises under the old Act. I would not be prepared to make an order under Section 66 determining that a patent should issue. But it appears that, notwithstanding the provisions of Section 66, the Commissioner will regard himself as at liberty to authorise the issue of a patent if this appeal be dismissed.

I am, however, prepared to dismiss the appeals by consent and leave it to the Commissioner to take whatever course he thinks appropriate in the circumstances.

I say I would not be prepared to make an order determining that a patent should issue because I do not have before me material which would enable me to come to that decision.

There remains one difficulty. Although it appears perfectly clear that the appellants are prepared to consent to a dismissal of their appeals no one is

here on their behalf formally to consent, they thinking that they have done all that is required to make their attitude clear. In the circumstances I will treat the persons who are present, and who have been in communication with them and their solicitors as authorised to convey to me their consent to the dismissal of the appeals.

I therefore dismiss the appeals by consent.

I will just add this - it is not part of the formal order - that the fact that I have done so must be communicated forthwith to the solicitor on the record for the appellants. He must be informed that, if I be incorrect in assuming that the appellants are consenting to a dismissal of the appeals, the matter may be mentioned to me this afternoon. Perhaps Mr. Hulme who appears for the Commissioner will undertake to communicate this and let me know. I am reluctant to put an end to the proceedings without being perfectly assured that that is the desire of the persons concerned.