

# Seeds of the imagination

## Australian inventor successfully enforces patent in South Africa



John Ryan, a Member of the Order of Australia and Principal of Perth farm machinery manufacturer Ausplow, has in excess of thirty patents and registered designs issuing in respect of his inventions.

In the vast majority of instances, patents, registered designs and registered trade marks keep people off “your patch” by their very existence, but occasionally a competitor does not take the hint. Accordingly, John was surprised it became necessary to litigate to enforce his company’s intellectual property rights.

Ausplow, the patentee in respect of South African Patent 95/0812, took action against Northpark Trading (a South African farm machinery manufacturer) for imitating the seeding assembly manufactured by Ausplow in Perth and sold in South Africa. On 30 June 2007, Ausplow was granted an injunction, costs and damages by the High Court of South Africa.

John has been a client of Spruson&Ferguson and designing farm machinery for in excess of 30 years. In particular, he has been an advocate of “minimum tillage” as a means of improving crop yields. John came to recognise that accurate seed location within a soil layer was important, as was the proper preparation of a seed bed. He believed that by accurately locating the seed bed, the seed delivered thereto would also be correctly located. It was with this target in mind

that John devised a seeding assembly that is the subject of the above mentioned South African patent. There are corresponding patents in Australia, Canada, New Zealand and the USA.

As expected, the defendant, Northpark Trading, attacked the validity of the patent by arguing that the invention lacked novelty and an inventive step. In arguing lack of inventive step, the defendant was essentially arguing that the invention was obvious.

The defendant also argued the patent should be revoked since they considered the patent specification lacked clarity. It is important for a patent to clearly describe and claim the invention.

In this type of litigation, evidence is presented to the Court by way of expert witnesses. The expert witnesses are expected to interpret the patent specification and any other documents relied upon by either side. However, it is not the place of the expert witness to express an opinion in respect of infringement, nor to express an opinion in respect of validity. It is the Court that decides whether, in the light of the evidence presented, the patent is valid and/or infringed.

The defendant relied on 33 documents in arguing the invention was known prior to 3 February 1994.

BR Southwood, a Judge of the South African High Court, and an acknowledged specialist in South African Patent Law, ordered that the defendant’s counter claim for revocation be dismissed. He considered the claimed invention to be novel and inventive, and the specification clear. He also ordered the defendant be restrained from infringing, that there be an enquiry into damages and awarded Ausplow court costs.

It was particularly pleasing for John that a Certificate of Validity was to issue. In view of the defendant’s efforts to show invalidity, the Court considered the Certificate was justified.



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