

Are you being watched?

Arrow Plastics Pty Ltd

The next time you remove a two or four litre container of your favourite vanilla ice-cream from the freezer, have a look at the base. There is a high likelihood that you will see the words "Arrow Plastics". Arrow Plastics is an injection moulding company based in Sydney that manufactures ice-cream containers. Spruson & Ferguson has assisted Jim Stafford at Arrow Plastics to protect Arrow's intellectual property since 1985.

One of the key tools employed by Jim to stay ahead of the game is to monitor his competitors' intellectual property. He has Spruson & Ferguson watch the Australian Patent Office records on his behalf and periodically provide information on patent applications lodged by other parties that may be of interest to him. For example, lodgement of a patent application by a competitor gives Jim strategic information about that competitor's latest technical advancements and their possible market strategies. Spruson & Ferguson also provide Jim with copies of patent specifications that describe his competitors' new product developments.

Another reason Jim has Spruson & Ferguson monitor the Patent Office records is to detect patent applications that have been allowed and that may hinder Jim's business activities, both presently and in the future. If any patent applications are of particular interest, Jim has Spruson & Ferguson review the specifications to provide him with an assessment of whether granting of a patent might present a problem. If the patent application is of concern, then the application can be opposed within 3 months of acceptance. During a patent opposition, demonstration to the satisfaction of the Patent Office that the invention as claimed in the application is not new or inventive will result in the application being rejected by the Patent Office.

In October 1999, a patent application was lodged for an ice-cream container. The application was ultimately owned by NCI Packaging Pty Ltd, an injection moulding company that is a competitor to Arrow Plastics. The application resulted in allowance of Australian Patent Application No. 782642.



Acceptance of this application was detected by Spruson & Ferguson and reported to Jim. Following an assessment by Spruson & Ferguson, Jim decided to oppose the application as he considered there was a probability it would hinder his business. He was also of the view that the claimed invention was not new.

A Notice of Opposition was lodged with the Patent Office and was subsequently supported by evidence, which consisted partly of ice-cream containers that were used prior to October 1999. These ice-cream containers had the features that NCI claimed were new. NCI lodged rebutting evidence. All the evidence was reviewed by the Patent Office with the Attorneys for each side attending a hearing and arguing their respective client's case. Spruson & Ferguson attended the hearing on behalf of Arrow Plastics and presented what was essentially an engineer's view of the containers and reasons why the container allegedly invented by NCI was not new.

NCI's patent application stated that their invention resided in the way the lid engaged the body of the container. Surrounding the top of the container was a recess into which the lip of the lid engaged to provide an arrangement that hinders tampering. The evidence provided by Jim supported an argument that such an arrangement was well known prior to lodgement of the NCI patent application in October 1999.

Following the hearing, the Patent Office issued a decision rejecting the NCI patent application. The Hearing Officer had reached the view that, having regard to the evidence provided by Jim, the invention as claimed by NCI was not new in October 1999.

The above circumstances demonstrate some benefits that can be gained by monitoring your competitors' patent applications. A similar watch can be conducted in respect of your competitors' trade mark applications to alert you to any such applications that may hinder your business and that you may wish to oppose.

Greg Turner, Principal of Spruson & Ferguson, has assisted Arrow Plastics in matters relating to intellectual property since 1985. For more information please contact:



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