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13 November 2018

Court Proceedings

Davies Collison Cave Pty Ltd

Level 15
1 Nicholson Street
MELBOURNE VIC 3000
Australia

Your reference	35270869/NNR/nlb
Application number	2013213708
Applicant name	SARB Management Group Pty Ltd

Dear Sir/Madam,

Please find attached copies of documents in relation to NSD75/2018 for Australian Patent No. 2013213708 filed by Spruson & Ferguson Lawyers on behalf of Vehicle Monitoring Systems Pty Ltd and a copy of our response.

Yours sincerely,

Dave Murphy
Oppositions and Hearings
Phone: (02) 6283 2455

2 November 2018

Filed via eServices

Commissioner of Patents
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Dear Commissioner

**Vehicle Monitoring Systems Pty Ltd v SARB Management Group Pty Ltd - Federal
Court Proceedings No. NSD75/2018
Our Ref: L00742:JQC**

We act on behalf of Vehicle Monitoring Systems Pty Ltd, the Appellant in the above identified proceedings.

Pursuant to the *Federal Court Rules 2011* (Cth), we **enclose** a stamped copy of the Amended Notice of Appeal, filed in the Federal Court of Australia on 31 October 2018.

Yours sincerely



Khajaque Kortian
LLB (UTS)
Principal

SPRUSON & FERGUSON LAWYERS PTY LIMITED
khajaque.kortian@spruson.com

NOTICE OF FILING AND HEARING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 31/10/2018 2:14:04 PM AEDT and has been accepted for filing under the Court's Rules. Filing and hearing details follow and important additional information about these are set out below.

Filing and Hearing Details

Document Lodged:	Notice of Appeal (Intellectual Property) - Form 92 - Rule 34.24(1)
File Number:	NSD75/2018
File Title:	VEHICLE MONITORING SYSTEMS PTY LTD v SARB MANAGEMENT GROUP PTY LTD
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink, reading 'Warwick Soden'.

Dated: 2/11/2018 10:30:05 AM AEDT

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The Reason for Listing shown above is descriptive and does not limit the issues that might be dealt with, or the orders that might be made, at the hearing.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



Amended notice of appeal (intellectual property)

No. NSD75 of 2018

Federal Court of Australia
District Registry: New South Wales
Division: General

On appeal from a decision of the Delegate of the Commissioner of Patents

Vehicle Monitoring Systems Pty Ltd

Appellant

SARB Management Group Pty Ltd

Respondent

To the Respondent

The Appellant appeals from the decision as set out in this notice of appeal.

The Court will hear this appeal, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place: Federal Court of Australia, Law Courts Building, Queens Square, Sydney NSW 2000

The Court ordered that the time for serving this application be abridged to

Date:

Signed by an officer acting with the authority
of the District Registrar

Filed on behalf of (name & role of party) Vehicle Monitoring Systems Pty Ltd, Appellant
Prepared by (name of person/lawyer) Khajaque Kortian, Principal
Law firm (if applicable) Spruson & Ferguson Lawyers Pty Ltd (Law firm ref: L00742)
Tel (02) 9393 0300 Fax (02) 9267 9974
Email khajaque.kortian@spruson.com
Address for service Level 24, Tower 2, Darling Park, 201 Sussex Street, Sydney NSW 2000
(include state and postcode) _____
21493035_1



The Appellant appeals from the decision of M G Kraefft, Delegate of the Commissioner of Patents, given on 15 December 2017 at Canberra, Australian Capital Territory.

The Delegate decided that:

- (a) the opposition filed by the Appellant against the grant of Australian Patent Application No. 2013213708 (**the Application**) should be dismissed; and
- (b) claims 25-28 of the Application should be deleted, on the basis that those claims contravene s 40(3A) of the *Patents Act 1990* (Cth) (**Act**).

The Appellant appeals from the part of the Delegate's decision referred to in sub-paragraph (a) above only.

Orders sought

1. The appeal be allowed.
2. The decision of the Delegate be set aside, save in so far as it concerned claims 25 to 28 of the Application.
3. Pursuant to s 60(3A) of the Act, the Application be refused.
4. The Respondent pay the Appellant's costs of the appeal, and of its opposition to the Application.
5. Such further or other orders as the Court sees fit.

Grounds relied on

Ground 1: Lack of inventive step

1. The alleged invention, so far as claimed in claims 1-24 of the Application, is not a patentable invention within the meaning of s 18(1)(b)(ii) of the Act, because it does not involve an inventive step when compared with the prior art base.

Particulars

- (a) The alleged invention, so far as claimed in each claim, would have been obvious to a person skilled in the relevant art in light of the common general knowledge before the claimed priority date.
- (b) Further or alternatively, the alleged invention, so far as claimed in each claim, would have been obvious to a person skilled in the relevant art in light of the common general knowledge considered together with the following prior art information:



- (i) International Patent Publication No. WO2005/111963, which was published on 24 November 2005;
 - (ii) The Australian National Parking Steering Group (**ANPSG**) Journal, Vol 3(10), "*PODS – The Next Big Thing?*", which was published in June 2005;
 - (iii) the [slides for the](#) PODS presentation given by Mr Tom Gladwin at the ANPSG 2005 Perth Conference on 17 November 2005;
 - (iv) the PODS presentation given by Mr Fraser Welch at the ANPSG 2006 Hobart Conference between 22 and 24 November 2006;
 - (v) Australian Patent No. 2006235864, which was published on 24 May 2007; and
 - (vi) the Meter-Eye VDS II Brochure, published on or around 9 November 2006.
- (c) Further, or alternatively, the alleged invention, so far as claimed in each claim, would have been obvious to a person skilled in the relevant art in light of the common general knowledge considered together with the following combinations of prior art information, on the basis that the skilled person could, before the priority date of each claim, be reasonably expected to have combined the information:
- (i) the prior art information referred to in sub-paragraphs (i) to (iv) above;
 - (ii) the prior art information referred to in sub-paragraphs (ii), (iii) and (iv) above; ~~and~~
 - (iii) the prior art information referred to in sub-paragraphs (v) and (vi) above; and
 - (iv) the prior art information referred to in sub-paragraph (i) above combined with the technical specifications for the Texas Instruments MSP430 microprocessor published on or about June



[2007 and technical specifications for the Micrel MICRF#01 transceiver published on or about March 2003.](#)

Ground 2: Lack of entitlement

2. The Respondent is not entitled to the Application, in that it does not (and did not) derive title to the alleged invention from the inventor (see the Act, s 15).

Particulars

- (a) The Application lists Paul Carboon, Stephen Toal and Sandy del Papa as the alleged inventors.
- (b) Fraser Welch, or alternatively Mr Welch and Tom Gladwin:
 - (i) is or are the inventor(s) of the alleged invention described and/or claimed in the Application; or
 - (ii) alternatively to sub-paragraph (i) above, sufficiently contributed to that invention so as to be an inventor or inventors.
- (c) Mr Welch disclosed the subject matter of his contribution (or alternatively, his and Mr Gladwin's contribution) to the alleged invention to the Respondent under conditions of confidentiality (or alternatively, in circumstances where no obligation of confidence applied) during the course of discussions with the Respondent between June 2005 and April 2006 for the purpose of integrating the Respondent's ticket issuing device with the Appellant's VMS product.
- (d) The Respondent does not (and did not) derive title to the alleged invention described and/or claimed in the Application from Mr Welch or Mr Gladwin.

Ground 3: Lack of sufficiency

3. The complete specification does not disclose the invention in a manner which is clear and complete enough for the invention to be performed by a person skilled in the relevant art: Act, s 40(2)(a).

Particulars

- (a) There is no disclosure in the complete specification that the VDU should be selected in preference to other system components (such as the hand held



device) to perform the processing task of placing the infringement data into a format suitable for pre-population into infringement issuing software.

- (b) There is no disclosure in the complete specification of any of the software/firmware that would be necessary to program the VDU to place the infringement data into the pre-population suitable format.

Appellant's address

The Appellant's address for service is:

Place: Spruson & Ferguson Lawyers Pty Limited, Level 24, Tower 2, Darling Park, 201 Sussex Street, Sydney NSW 2000

Email: ~~brett.rowland@spruson.com~~ khajaque.kortian@spruson.com

The Appellant's address is Suite 3, Ground Floor, 41 McLaren Street, North Sydney NSW 2060

Service on the Respondent

It is intended to serve this application on the Respondent and the Commissioner of Patents.

Date: 31 October 2018

A handwritten signature in blue ink, appearing to read 'Khajaque Kortian'.

Signed by Khajaque Kortian
Lawyer for the Appellant



13 November 2018

Court Proceedings

Spruson & Ferguson
GPO Box 3898
Sydney NSW 2001
Australia

Your reference	L00742:JQC
Application number	2013213708
Applicant name	SARB Management Group Pty Ltd

Dear Sir/Madam,

Thank you for service of the Amended Notice of Appeal in relation to NSD75/2018 for Australian Patent No. 2013213708.

Please be advised that, having considered these documents, the Commissioner of Patents does not intend to exercise any rights under [Rule 34.23 of Federal Court Rules 2011](#) to appear in these proceedings.

The Commissioner would appreciate advice on the decision when it is issued or if the action is discontinued.

Yours sincerely,

Dave Murphy
Oppositions and Hearings
Phone: (02) 6283 2455