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IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY

M.196/82

769

BETWEEN GANG-NAILS N.Z. LIMITED  
a company incorporated  
under the laws of New  
Zealand of 3-5 Zealandian  
Drive, East Tamaki,  
Auckland, New Zealand,  
Manufacturers Applicant

AND ARTHUR RAYMOND TURNER a  
British Subject and New  
Zealand Citizen of 69  
Church Road, Taradale,  
Napier, New Zealand

Respondent

Hearing 10-14 October 1983  
Counsel T. M. Gault and A.C. Calendar for Applicants  
I. L. McKay for Respondent  
Judgment 9 July 1984

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JUDGMENT OF ONGLEY J.

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This application for revocation of Letters Patent No.176922 is made upon various grounds under Section 41 of the Patents Act 1953 to which I shall refer in detail later. The brief history of the application for Letters Patent is as follows: Application for Letters Patent accompanied by both a provisional specification and a complete specification was filed on 13 March 1975. The filing date of the said application and the provisional specification was ante-dated to 21 December 1971 pursuant to a request under Regulation 23(1) of the Patents Regulations 1954. Notice of acceptance of the complete specification was published in Patent Official Journal

1.

No.1162 on 8 July 1976. Notice of opposition under S.21 of the Patents Act 1953 was filed by Gang-Nails (N.Z.) Limited on 5 November 1976 the accompanying Statement of Case showing the grounds of opposition were to be those found in S.41 (1)(b)(d)(e)(f) and (g). A counter-statement was filed on 27 January 1977 conceding the interest of the opponent, but denying each of the stated grounds. Declarations of a number of expert witnesses were filed in support of the application but no evidence was offered in reply and the opponent did not appear at the hearing before the Assistant Commissioner of Patents held on 17 October 1978.

On 13 November 1978 the Assistant Commissioner refused to seal a patent on the ground that the invention as then claimed was obvious and clearly lacking any inventive step having regard to prior published material cited by the opponent.

The applicant then appealed to this Court. By virtue of Section 97(3) of the Patents Act 1953 the Court on appeal may exercise the same discretionary powers as are conferred by the Act upon the Commissioner. The duty of the Court in such proceedings is as described by Skerrett C.J. in Re McLeod and McShain's application [1928] NZLR 604, 606:

"The duty of the Court is not to give a decision which will shut out the applicant altogether, but,

in cases where the objector has not discharged the onus cast upon him, to allow the patent to proceed, leaving the validity of the patent to be fought out by the parties, if they think fit, in a suit for infringement where the whole position can be thoroughly gone into."

It is clear of course that the validity of the patent may be tested on an application for revocation at the suit of any interested person no less than by an action for infringement brought by the patentee.

The present applicant did not appear on the hearing of the appeal to support the Assistant Commissioner's decision actively but it was nevertheless the duty of the Court to consider the matter upon the opponent's Statement of Case and the evidence adduced by the present respondent. (Reg.54(4) Patents Regulations 1954). Upon the material then before me I concluded that the onus of showing that the invention was obvious and clearly did not involve any inventive step had not been discharged by the opponent. I allowed the appeal in a judgment delivered on 15 December 1980 by ordering that the patent be sealed in the form in which the application was made. The opponent, as applicant in these proceedings, seeks to have that patent revoked.

At the commencement of the hearing of this application Mr McKay applied for an amendment to the form of the complete specification under Section 39. The proposed amendment was put forward as being by way of disclaimer under Section 40(1).

Mr Gault opposed the grant of an amendment and after brief submissions I reserved the question for further argument at the completion of the evidence. The case has been argued in a manner designed to enable me to deal with the present application on either the original or amended basis. The scope of the amendment sought is indicated by the claims for the invention set out below in which the proposed amended wording is shown in italic script. Claims 2 and 3 as originally specified would be abandoned.

"WHAT I CLAIM IS:

1. A wall framing having a plurality of timber studs and a metal strip member of angle cross-section *bracing the wall framing against compressive and tensile forces by having one side of the member located in diagonal saw cuts provided across the timber studs and the other side of the member having a plurality of holes or impressions through selected ones of which nails or woodscrews are passed into the timber studs.*

~~2. A wall framing as claimed in claim 1 wherein the member is mounted horizontally or diagonally across the studs.~~

~~3. A wall framing as claimed in claim 1 wherein the member is located in saw cuts in the timber studs as a lintel.~~

4. 2. A method of wall construction wherein following the positioning of a plurality of spaced studs, nogging and top and bottom plates a series of saw cuts are made in the faces of all or some of the wall elements on one or both sides of the wall construction, said saw cuts being diagonally or ~~laterally~~ aligned, and inserting one side of an angle cross section member into said aligned saw cuts then passing nails or screws through selected holes or impressions in the other side of the angle member into all or some of the wall elements across which the angle member extends *in bracing said wall construction against compressive and tensile forces.*

5.3. A wall framing having a metal member arranged substantially as herein described with references to and as shown in any one of figures 1, 2, or 4 of the accompanying drawings."

The grounds relied upon by the applicant to obtain revocation of the patent as set out in the Particulars of Objection are as follows:

"TAKE NOTICE that the Applicants for revocation will on the trial of this cause rely on the following objections to the validity of Letters Patent No.176922.

1. THE Letters Patent in suit were granted on the application of ARTHUR RAYMOND TURNER who was not a person entitled under the provisions of the Patents Act 1953 to apply therefor.

2. THE alleged invention, the subject of all claims of the complete specification of the said Letters Patent is not an invention within the meaning of the Patents Act 1953.

3. THE said alleged invention so far as claimed in any claim of the complete specification is not new having regard to what was known or used before the priority date of the claim in New Zealand.

(a) It had been published by the deposit on the shelves of the library at the Patent Office of the following specifications of Letters Patent granted in foreign countries:

<u>NAME</u>	<u>COUNTRY</u>	<u>NUMBER</u>	<u>PARTS RELIED ON</u>	<u>CLAIMS OF RESPOND- ENT SPECIFICATION AGAINST WHICH RELIED ON</u>
Balduf	U.S.A.	Abstract No. 1,389,573	The Whole	All
Tennison	U.S.A.	Abstract No. 3,592,997	The Whole	All

(b) It had been used:-

(i) in a building at 31 Atkinson Avenue, Otahuhu, Auckland, in New Zealand, occupied by Avon Equipment Co. Limited, and owned by Neil & Walker, which building has been erected from

a date prior to the earliest possible priority date of the claims of New Zealand Letters Patent No.176922:

(ii) in shelves in the offices of A.J. Park & Son, Solicitors and Patent Attorneys, Auckland, New Zealand.

4. THE said alleged invention so far as claimed in any claim of the complete specification is obvious and did not involve any inventive step having regard to what was known or used before the priority date of the claims in New Zealand. The Applicants will rely upon all matters set forth in paragraph 3 above and upon common general knowledge.

5. THE said alleged invention in so far as claimed in all the claims of the complete specification is not useful. The Applicants for revocation will rely on the absence from the specification of (a) any description of thickness of a useful metal strip member; (b) of a description of what comprises "angle cross section"; (c) of any description of what comprises "an impression"; (d) as to what is meant by the passage, "a plurality of holes or impressions through selected ones of which nails or woodscrews are passed into the timber studs".

6. THE complete specification of the said Letters Patent does not sufficiently and fairly describe the invention and the method by which it is to be performed. The Applicants for revocation will rely hereunder on the absence of any or alternatively any sufficient direction as to (a) what constitutes a useful metal strip member; (b) what angle the one side and the other side of the member are disposed to each other.

7. The scope of all claims of the complete specification is not sufficiently or clearly defined.

8. ALL claims of the complete specification are not fairly based on the matter disclosed therein."

The first and last of those grounds have been abandoned. Those remaining invoke the grounds provided by Section 41(1) in subclauses (d) (e) (f) (g) (h) and (i). The principal issue relates to the question of obviousness under S 41(1)(f). The grounds numbered 5, 6 and 7 in the

Particulars of Objection are relied upon in conjunction with and to support the ground of obviousness rather than as separate issues of substance.

In support of its contention that the patent lacks novelty and is obvious the applicant has adduced affidavit evidence of a number of expert witnesses all of which is new material not before the Assistant Commissioner when he declined to grant the patent or before me on appeal from his decision. The respondent has also led a substantial body of affidavit evidence. All witnesses, with the exception of Professor Mowbray, now deceased, have been available for cross-examination and the fact that not all were required to attend the hearing for that purpose or having attended were not cross-examined on all issues is not to be taken as an indication that their evidence is not challenged but rather that Counsel have shown a commendable desire to avoid seeming to be repetitious.

The integers of Claim I as originally framed are the following:

1. a wall framing
2. a plurality of timber studs
3. a metal strip member of angle cross-section
4. one side located in saw cuts across the studs
5. the other side having holes or impressions
6. through selected holes, nails or screws are passed into the timber studs.

The applicant criticises the incompleteness of claim (1) in respect to integers 3 and 4. In respect of 3 he says that there is no specified thickness of the metal strip, no specified angle and no dimensions of the flanges. In respect of 4 he says that the word "side" appears to be used interchangeably with flange, there is no specified depth for the cuts, particularly where they cross the plates.

On amendment in accordance with the respondent's application there would be an added integer of claim (1) for the metal strip member to include the bracing of the wall framing against compressive and tensile forces.

It is convenient to deal first with the ground of lack of novelty or anticipation under S 41(e) and then with obviousness under S 41(f) as they overlap both on the evidence led in support of them and on the submissions of counsel so that much of what is said in connection with anticipation is relevant as well on the principal ground of obviousness.

The applicant's case under S 41(e) is founded upon the United States abstract of specification 2389 573 referred to in the evidence in this case as the Balduf abstract.



A printed copy of this United States patent specification abstract was received from the United States Patent Office and was made available for public inspection in the New Zealand Patent Office Library on 8 January 1943.

The claim made for this invention as stated in the United States Patent Office Journal is as follows:

"In combination with a plurality of studs as set up, to form a rigid building frame having plates secured across the ends of said studs, said studs and plates having aligned angular saw kerfs therein, a right-angle utility strip of metal having one flange in said saw kerfs and the other flange against the face of said frame and rigidly secured to said studs and plates, said utility strip being sufficiently thin and malleable to enable ordinary building nails to be easily driven therethrough and sufficiently thin to enable facing material to be secured to said studs over said strip without appreciable distortion of said facing material thereby."

The abstract has an accompanying drawing of a building frame which it is not practicable to reproduce here but which depicts a building frame comprising, in the main, vertical studs secured to plates at the base and top thereof. There are two angular members shown having the identifying number 6 which it is contended by the applicant illustrate the "right-angle utility strip of metal" referred to in the text. Mr McKay submits that there is no certainty as to whether those two members depict the utility strip referred to in the text and for a number of reasons submits that the drawing and the text examined together or separately do not disclose a diagonal metal brace which would infringe the amended claims made

for the patent in suit. In the first place he says that the abstract does not specify that the building frame is made of timber and contends that for all that the abstract discloses it may well be a metal frame of a type known to be used at the time the Balduf patent was first available in New Zealand. There are some 15 members identified by the numeral 6 only two of which are shown in positions in which, even if designed to do so, they could possibly fulfil the function of a brace. All other members numbered six are in Mr McKay's submission clearly not braces and there is no basis for assuming that the diagonal members so numbered are intended to represent the utility strip described in the text. A building frame of the estimated size of that shown in the abstract would require not less than 10 such members for adequate bracing which argues against the diagonal members being intended to have that function. A further criticism of the drawing is that the diagonal member numbered 6 set in the front wall of the frame does not fit the description in the written abstract in that it does not clearly appear to be an angular strip comprising two flanges but rather a strut of the same dimension as the studs, possibly set in between the studs in sections in the same manner as the traditional timber brace.

As to the text, the respondent contends that the writing does not indicate a frame made rigid by a diagonal metal strip having the function of a brace but discloses

an already rigid frame in combination with which there is used a metal utility strip the purpose of which is not identified either by the text or by the drawing.

I confess to some uncertainty in endeavouring to interpret the drawing when the earlier proceedings were before me and I still find it to be far from precise. If one were left to discover the invention from the drawing alone there would be little prospect of doing so successfully. The drawing examined in conjunction with the text does, however, in my view, make clear that the building frame in the drawing is of timber. I accept the evidence of Mr Edgar Dagley, engineer, that the terms "stud" and "plate" ordinarily have reference in building construction to members made of wood. The usage is so common, I believe, that if steel or aluminium were the intended material it would be so stated. That view is consistent, I believe, with the specifying of the material of the "utility strip" as metal whereas the material of the other members is not specified. Further, the reference in the text to saw kerfs in the studs and plates and the securing of one flange to the studs by nailing puts the issue beyond doubt in my view.

I cannot agree with Mr McKay's interpretation of the text as indicating the use of the metal strip in combination with an already rigid building frame. I take it to indicate the use of a right angle utility strip of

metal in combination with studs to form a rigid building frame. The purpose of the metal strip is thereby stipulated to be the forming of the rigid frame.

The specification of the metal strip as "sufficiently thin and malleable to enable ordinary building nails to be easily driven therethrough" raises a question as to the capacity of the metal strip to function usefully as a brace. The evidence satisfies me that the maximum thickness of metal which would allow nailing in that way is not greater than 0.8 mm. I accept that at that thickness a right angle strip of metal set in saw kerfs as described in the Balduf abstract would have a bracing effect against tensile forces but would tend to buckle when subjected to the compressive forces expected to be exerted upon the frame of a house of light timber construction of ordinary dimensions. That limitation of capacity to function as a brace might well lay the Balduf invention open to challenge on the grounds of utility but I do not think it can be successfully argued that the invention has no bracing effect whatsoever against compressive forces. Recognition of the metal strip as a brace is not assisted by the illustration in the drawing of only two such strips in positions where a brace set in angular saw kerfs might be expected to be sited, that number being patently inadequate to the function of bracing the frame shown in the drawing. I accept however that the probable reason for only two diagonally disposed

strips appearing in the drawing is that an attempt to depict the full complement of such members required to brace the building frame adequately would have resulted in a diagram somewhat less readily decipherable than that in fact shown in the abstract.

While I find therefore that the rather crude drawing does not assist in the interpretation of the text I conclude that the Balduf text discloses a right angle metal bracing strip, one flange being located in diagonal saw cuts or saw kerfs in timber studs, the other flange being against the face of the said studs so as to permit nails to be driven through the metal to fasten it to the studs.

The approach to be adopted in judging the issue of anticipation is as stated by Sachs L.J. in General Tyre and Rubber Company v Firestone Tyre & Rubber Company Limited [1972] R.P.C. 457, 485-486:

"When the prior inventor's publication and the patentee's claim have respectively been construed by the court in the light of all properly admissible evidence as to technical matters, the meaning of words and expressions used in the art and so forth, the question whether the patentee's claim is new for the purposes of section 32(1)(e) falls to be decided as a question of fact. If the prior inventor's publication contains a clear description of, or clear instructions to do or make, something that would infringe the patentee's claim if carried out after the grant of the patentee's patent, the patentee's claim will have been shown to lack the necessary novelty, that is to say, it will have been anticipated. The prior inventor, however, and the patentee may have approached the same device from

different starting points and may for this reason, or it may be for other reasons, have so described their devices that it cannot be immediately discerned from a reading of the language which they have respectively used that they have discovered in truth the same device; but if carrying out the directions contained in the prior inventor's publication will inevitably result in something being made or done which, if the patentee's patent were valid, would constitute an infringement of the patentee's claim, this circumstance demonstrates that the patentee's claim has in fact been anticipated."

By adopting that approach I reach the conclusion that by following the instructions of the Balduf abstract the inventor would make something having all the integers of the patent in suit except a plurality of preformed holes or impressions in that flange of the metal strip which is not inserted in the saw kerfs.

It may be said that when a nail is passed through the metal into the stud it in fact passes through a selected hole but, if that is a tenable proposition, the argument does not extend to meet the existence of a plurality of such holes, or the requirement to select therefrom some holes for the purpose of passing nails or woodscrews through them. It may well be correct that there is nothing in the claim requiring the holes or impressions to be formed at the time the metal strip is made but I think it is clear that the holes or impressions are required to be formed at some earlier time than the passage through them of the nails or screws.

In that respect, in my view, claim I of Turner would not be infringed by the Balduf invention and it cannot be said, therefore, that the patent in suit has been fully anticipated by Balduf. I find that it would be new in that respect but only in that respect. That is sufficient however to lead me to the conclusion that the patent should not be revoked on the ground of lack of novelty.

The Balduf abstract is relied upon as well as other sources of knowledge to support the ground of obviousness under Section 41(f). Those other sources may be identified as follows:

1. U.S. Patent abstract 3591997 referred to as the Tennison abstract
2. Dexion and Handy Angle Constructions
3. KEMPE'S ENGINEER'S YEAR BOOK (1971)
4. Building at 31-33 Atkinson Ave, Auckland

The question to be considered when S 41(f) is invoked is whether the alleged inventive step was obvious to a normally skilled addressee in the art, the meaning of the word obvious being no more, as Sachs L.J. said in General Tyre v Firestone Tyre Co. Limited, than its primary dictionary meaning of "very plain". The nature of

the inquiry is addressed by Sachs L.J. in this passage at 497-498 of his judgment:

"When head (f) is invoked it is, of course, as previously indicated, for whoever seeks revocation of a patent to show that the alleged inventive step was obvious to a normally skilled addressee in the art. On the way to that end there are here a number of preliminary questions to be resolved. These include the common general knowledge to be imputed to that addressee; whether what had to be done to achieve the step was truly a matter of inventive experiment or merely a matter of that type of trial and error which forms part of the normal industrial function of such an addressee; what documents he would find in the course of such researches as he would be expected to make; and how he would regard those documents in the light of common general knowledge. Then finally one has to consider whether the step is properly described as a new combination of integers or merely as a collocation of old ones. None of these questions, some of which inevitably overlap, is easy to resolve, and on each it is for the appellants to establish their contentions."

Here I take the art with which the invention is concerned to be the art of building dwellings of light timber construction. The view of one witness, however, that the person so engaged in New Zealand is ordinarily a ex-carpenter working from a draughtsman's rather than an engineer's or architect's plan is, I believe, an over simplified one. The house building industry may well encompass such persons but so far as one can generalise I would say that modern house building is a fairly sophisticated art in which the builder may be taken to have available to him the services and advice of a structural engineer. So equipped he would, in my view, have found both the Balduf and Tennison abstracts upon searching the United States patent specifications



available in New Zealand before the priority date of Patent 176 922. Whether in solving the problem with which the patentee was concerned the information contained in those documents would have disclosed to him the angular metal brace which the respondent claims to have invented is a further issue.

The Tennison abstract became available in New Zealand only three months before the priority date of the patent with which we are concerned but that was time enough for it to be discovered by agents or patent attorneys employed for that purpose by an addressee intent upon obtaining the information. However I believe that the criticism by witnesses of the Tennison abstract as a source of information leading to disclosure of the patent in suit are well founded. The text of the abstract discloses a sheetmetal channel member applicable to the frame of a building as a brace, having multiple openings arranged in a pattern so as to insure that several such openings are in alignment with portions of the frame which the brace crosses to permit multiple fasteners to connect the brace to the frame.

There is nothing in the text to indicate that the flanges of the channel member are checked into saw kerfs or in what other manner the member is to be applied to the frame. The drawing does not clearly lead to that method of installation and appears to leave open the possibility

that the flanges extend outward from the frame and may or may not be checked into the frame members in the same way that a continuous timber brace might be. There is also the possibility that if the flanges of the metal member extend towards the frame they are cut out where the channel member crosses the frame members to allow the webb of the member to rest against that face of the stud and possibly be checked into it. The draftsman's work is also open to question in several of its aspects. The mitred end of the member at the top plate is capable of conveying the impression that the member is of a pre-determined length designed to be applied to a building frame of fixed proportions. The accentuated shading of the upper side of the member is at odds with the accepted draughting convention so that the way in which the bracing member is shaded argues against the concept of a flange on the upper side being inserted into saw kerfs in the studs.

The applicant contends that the purpose and the mode of installation of the Tennison apparatus would be understood by a person skilled in the art of house building to disclose a metal bracing member having the same essential characteristics as the patent in suit, the channel member having the same capacity to withstand tensile and compression forces as a right angled metal member. To my mind there is too much left to conjecture by the Tennison abstract to be able to say that a person having the knowledge which it discloses would thereby be

led to the Turner brace. Largely for the reasons given by Mr Ide in paragraph 38 of his affidavit I find that the Tennison abstract does not assist the applicant to make out the ground of obviousness.

The Balduf abstract however, although it does not fully anticipate Turner, discloses a right angle metal brace set in <sup>diagonal</sup> saw kerfs in the studs of a timber building frame. There are two major objections to Balduf as a source of knowledge from which the Turner brace could be constructed without an inventive step. The first is that the metal strip though of unspecified thickness is "sufficiently thin and malleable" to enable ordinary building nails to be easily driven therethrough". As I have earlier said, I believe that metal fitting that description would necessarily be of a thickness of 0.8 mm or less. The evidence of the respondent and his witnesses shows that it is at least questionable whether a metal strip of that thickness would be useful as a brace to withstand the tensile and compression forces imposed by a timber building frame of ordinary dimensions. Secondly the Balduf abstract does not disclose preformed holes or impressions through which nails might be driven. Once it was accepted that metal of 0.8 mm thickness is of insufficient strength to make a useful brace it would become obvious to an inventor seeking a solution to the problem which faced Turner that a greater thickness of metal was required in order to provide the appropriate

strength. There is no inventive step involved in increasing the thickness of the metal but nailing on the site in the manner contemplated by Balduf would then be impracticable. The preforming of holes in metal fittings to permit the passage of nails or screws was a matter of common knowledge in the building trade at the relevant date and it was an obvious step in overcoming the inadequacy of the Balduf brace to increase the thickness of it and preform holes or impressions to facilitate the fastening of the metal strip to the frame members. That step may in fact have been anticipated in the use of the strap metal brace in the use of which two diagonal straps are crossed to provide bracing against tensile and compressive forces. That method of bracing had proved cumbersome and was not popular but the method of application by fastening through preformed holes was probably known as the thickness of the straps was such that nails or screws could not be punched through them but would have been preformed or drilled on the site. Knowledge of that technique at the relevant time is evidenced by this passage taken from Kempe's Engineer's Yearbook for 1971:

"Slotted Metal Sections.-

This material, in steel and light alloy is being increasingly used in industry for a wide variety of structural purposes. It has the great advantage over ordinary plain sections that holes or slots are provided at regular intervals along its length, which permit fastening in almost any position without the necessity for drilling holes. Modern designs are slotted with engineering accuracy in

various patterns. The presence of the slots reduces the weight, typical examples of the size thickness and weight of slotted angle sections in both steel and alloy are as follows (the relevant data is then provided."

It has been questioned whether Kempe would have been known to the skilled addressee at the priority date but I am satisfied that it was commonly used as a reference work at that time.

The width of the flanges of the Balduf brace and the thickness of the metal is not disclosed by the specification but in that respect it does not differ from Turner. The depth to which the flange would be inserted into the saw kerf would be dictated by the local building standards and the thickness of the metal would be determined by the requirement that the exterior cladding be applied without distortion. The determination of those measurements or dimensions would not require an inventive step but would be ascertained by workshop testing. Even if the metal member required to be checked into the stud to avoid deforming the cladding, that is not to my mind an inventive step but an obvious application of a long used building technique.

It is my view, therefore, that given knowledge of the Balduf invention contained in the U.S. patent abstract 2,389,573 the Turner bracing angle would be arrived at by the "imaginative skilled technician", "lacking in

inventive capacity" by employing known building techniques without any inventive step.

An important aspect of the history of this patent is the commercial success which attended the introduction of the Turner bracing angle to the building trade. In little more than 10 years from its earliest use it achieved such acceptance that it or its competitors came to be used in a large proportion of all new construction. It does not seem, however, on the evidence before me that prior to its introduction there was a long-felt want of a metal brace of the type developed by the respondent. I am not satisfied by the evidence that any significant portion of the building industry had applied its resources to the development of an alternative to the traditional timber brace or had consciously recognised a need for a substitute for the timber brace. Undoubtedly the respondent himself spent a great deal of time and a large amount of money in gaining acceptance of his bracing angle by the Housing Corporation and by local authorities who fix the standards to be observed in building construction. Acceptance of change in those areas may tend to <sup>be</sup> slow and the respondent's persistence in obtaining recognition of his product was commendable. I accept that it is largely as a result of his efforts that a metal alternative to timber bracing is now accepted. It is still nevertheless an alternative and not a substitute for the older method: some builders, it would seem, still

prefer to use the conventional timber brace while some prefer metal. I do not think it can be said on the evidence in these proceedings that one technique is inherently superior to the other. Clearly the metal strip bracing must have its own attraction or it would not have been so successful in the market but in the circumstances of the case I do not find that the commercial success of the product is a factor which necessarily leads to the conclusion that it is the product of an inventive step. Weighing the strength of the inference as to inventiveness to be drawn from the commercial success of the product against the contrary indications to which I have adverted earlier I find it insufficient to disturb my conclusion that the Turner bracing angle did not involve an inventive step.

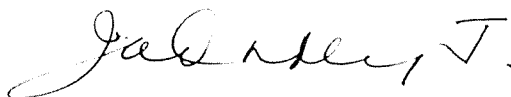
The evidence does not satisfy me that the use of "Handy Angle" or "Dexion" structures would make obvious the use of an angular metal strip as a brace for light timber construction. Their use at the relevant time was certainly known but their application was in a different field and they would not themselves have led a normally skilled addressee in the art of light timber construction to the Turner bracing angle or have added significantly to the knowledge available from the other sources to which I have referred. I take the same view in relation to the Atkinson Avenue house.

Because of my decision on the issue of obviousness it would not serve any useful purpose to deal individually with those other grounds which have been advanced in a supportive role. Nor do I find it necessary to deal separately with the other claims made for the patent in dispute. Claim 2 as amended is a method claim and claim 3 as amended is an omnibus claim. Both stand or fall on the view taken of claim 1 and that being adverse to the validity of the patent no other decision is open on a consideration of the additional claims.

I have endeavoured to deal with the evidence and submissions of counsel on the notional basis that the amendments sought to the complete specification were granted. In such event on the view I have taken the applicant would still succeed. There is no point, therefore, in granting the amendments and accordingly I dismiss that motion.

There will be an order revoking Patent No. 176922.

The applicant is allowed the sum of \$1,000.00 costs plus disbursements.



Solicitors:

Ennis Callander & Collins, Auckland, for the Applicant  
Young Swan Morison McKay, Wellington, for the Respondent