



**Dyno Nobel Asia Pacific Pty Ltd v Orica Explosives Technology Pty Ltd & ors**

**NSD 1484/2025**

**Orica's Outline of Submissions**  
**in reply on the Notice of Cross-appeal and Notice of Cross-contention**

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**A. Introduction**

1. These submissions respond to Dyno’s submissions dated 9 March 2026 (**DSA**) which address Orica’s Notice of Cross-appeal and Contention, and Dyno’s Notice of Cross-contention.<sup>1</sup>

2. Orica relies on the primary judge’s findings at PJ [1000]-[1006] but one aspect of Dyno’s summary of them in DSA [5] requires clarification. As Dyno sets out, the [REDACTED]

[REDACTED]

[REDACTED] DSA [5(b)] [REDACTED]

[REDACTED] DSA [5(d)]. [REDACTED]

[REDACTED] It “ [REDACTED]

[REDACTED]”: PJ [1004], first para, emphasis added. The reference to it adding “ [REDACTED]

[REDACTED]”, *ibid.*,<sup>2</sup> needs to be understood in that context: *cf* DSA [5(f)]. [REDACTED]

[REDACTED] are interdependent:

[REDACTED]

[REDACTED]

**B. Ground 1: 873 Patent – infringement of claim 1**

3. Contrary to DSA [9] and [11], Orica does not “*dramatically refashion*” its case on appeal, there is no “*new case*” on appeal, and Orica does not seek to depart from PJ [995]. As to the construction of claim 1 put below, see Orica’s opening submissions on infringement dated 18 September 2024 (**OOSI**) at [10.9] and [10.10]. These submissions were accepted at PJ [864]-[865].<sup>4</sup> As to whether the operation of CyberDet I Devices fell within the claim so construed, see OOSI at [17.11]-[17.14] and OCSVI at [41.15]-[41.18]. In its submissions below, Orica squarely confronted Dyno’s case (which was ultimately upheld by the primary judge). Orica contends this is inconsistent with the proper construction of claim 1, precisely as it submitted below. No *Coulton v Holcombe* or *Metwally* issue arises.

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<sup>1</sup> Orica’s submissions in chief on the cross-appeal dated 24 February 2026 are referred to as **OSIC**.

<sup>2</sup> PJ [1004] appears to identify the evidentiary source for the same reference to “ [REDACTED]” at PJ [1018].

<sup>3</sup> See PJ [1004] first para, second sentence, being Mr Jacobson’s evidence that “ [REDACTED]

[REDACTED]

[REDACTED]” (emphasis added).

<sup>4</sup> See too Orica’s closing submissions on validity and infringement dated 30 October 2024 (**OCSVI**) at [24.17]-[24.20].

4. Orica disputes that its case is inconsistent with PJ [1007] *cf* DSA [10]. That paragraph reflects Orica’s position concerning claim 1. It reads:

*To be found to have infringed claim 1, it must be shown that there has been a transmission to, and receipt by, CyberDet I Devices of the wireless command signal (which I will call step 1) which CyberDet I Device then determines whether they form part of the predetermined group (step 2).* (emphasis added)

5. In other words, claim 1 requires **(1)** the transmission of a signal to a CyberDet I Device and **(2)** the CyberDet I Device determining whether it is part of the predetermined group. As the primary judge correctly found at PJ [865], there are no limitations on **(2)** as to the means by which the determination process is to be performed by the CyberDet I Device. The steps operate sequentially. There is nothing about the signal of **(1)** that is implicated in **(2)**. Orica’s construction permits a harmonious reading of PJ [1007] with [865]. Dyno’s does not.
6. Dyno submits that Orica has misread PJ [865] because her Honour only meant to say the “*precise mechanism*” for determination in claim 1 is undefined: DSA [12]. However, that is Orica’s point. There is no requirement by which the determination *is to* occur, only *that it* occur. And, as PJ [865] makes clear, all that is required to satisfy the determination requirement is that the device know that it is intended to execute the intended operation.
7. There is no inconsistency in Orica’s position at OSIC [9] *cf* DSA [13]. This is the subject of paragraph 1(e) of the Notice of Cross-appeal. The operation of the CyberDet I Devices as a matter of fact is correctly recorded in OSIC [9] and DSA [13]. That factual operation was advanced below and, of course, stands independently of any issue of claim construction. On Orica’s construction of claim 1 (upheld by the primary judge), the primary judge’s reasoning in the concluding words of PJ [1018] was irrelevant to claim 1 but is relevant to claim 2. That reasoning was factually wrong, such that if the Full Court were to require information in the wireless command signal to inform the determination process for the purposes of claim 1, that requirement would be satisfied for the reasons in OSIC [9].
8. As for DSA [14], Orica does not dispute that the impugned devices must themselves perform the determination. That is what her Honour correctly identified in PJ [1007]. Orica’s position is that the CyberDet I Devices perform the determination themselves. The ‘precise mechanism’ by which they did so (which is not a requirement of claim 1, but is for claim 2) was to [REDACTED]

██████████. The “*philosophy...contemplated by*” a patent, whatever it may be and however it is to be determined, is an unreliable narrator. The question is whether the operation of the CyberDet I Devices infringes claim 1, in circumstances where both parties accept the primary judge’s claim construction and there is no relevant dispute on the facts. As submitted, the answer is “yes”.

9. A further issue raised in DSA [16] is that “*the selection of the CyberDet I devices*” occurs at an earlier point in time than the transmission of the command signal, because it occurs ██████████. That is true, but irrelevant to the infringement question. The earlier selection is wholly consistent with the requirement of claim 1 that there be within the “*plurality*” a “*predetermined group of ... devices*”. Claim 1 is concerned with a transmission of a command signal to the plurality, and, on the primary judge’s construction, devices within the predetermined group knowing that they are to execute the intended operation (PJ [865]). As set out in paragraphs 4-5 above, this necessarily occurs after the wireless command signal is transmitted. Dyno’s submissions as to “*philosophy*” and what the 873 Patent “*contemplates*” are thinly disguised efforts at construction with an eye to non-infringement,<sup>5</sup> rather than an application of the facts to the claim properly construed.

**C. Grounds 2 and 3: 873 Patent – infringement of claim 2, claim 4**

10. The nub of Dyno’s submissions at DSA [18]-[26] is that the ██████████ and the ██████████ are not “*compared*” so as to correlate (**claim 2**) and do not “*correspond*” (**claim 4**) because the ██████████ merely ██████████ to “*tell[] the device which part of the ██████████ to use...*”: see DSA [21].
11. At the same time, Dyno acknowledges her Honour’s finding that the group identification component and the stored group identification do not need to “*match*”: DSA [19]. This is really the end of the matter. If a CyberDet I Device applies the ██████████ ██████████, then necessarily this involves the CyberDet I Device ‘comparing’ those two components, to see if they ‘correlate’ or ‘correspond’ to produce a comprehensible command. If they do, then the CyberDet I Device has thus determined it is part of the predetermined group by reason of the successful ██████████.

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<sup>5</sup> As impermissible as construction with an eye to infringement. The patent is to be construed “*as if the infringer had never been born*”: *Hanwha Solutions Corp v REC Solar Pte Ltd* (2023) 180 IPR 315 at [92] and the authorities there cited.

#### **D. Grounds 4, 5, 6: Dependent claims and costs**

12. Dyno accepts that infringement of the balance of dependent claims would follow the determination of these issues: DSA [27]-[28]. DSA [29] misses the point. Orica does not seek to disturb the costs order on the 873 Patent if the cross-appeal otherwise fails. However, if infringement of the 873 Patent is established, Orica should have its trial costs of that issue. Dyno does not appear to dispute this.

#### **E. Dyno's notice of cross-contention in answer to the cross-appeal**

13. The key criticism Dyno makes at DSA [30]-[35] is that the primary judge did not take into account the construction of "*blast site*" in Mr Napier's evidence from Napier 3 (extracted at DSA [33]) at PJ [858]-[859]. However the primary judge did not err in not referring to that evidence. Her Honour should be understood as not accepting it on the question of construction (as she was entitled to do).<sup>6</sup> Critically, it was given in the context of Mr Napier giving evidence in answer on infringement issues, having already construed the term "*blast site*" in his earlier affidavits (to which the primary judge referred at PJ [859]). The primary judge was right not to accept late-raised construction issues arising in Napier 3 because that evidence was provided with an impermissible eye to non-infringement.
14. In any event, contrary to that evidence, there is nothing in the 873 Patent that would require the Court to read down the term "*blast site*" to mean detonators at a "*location*"-subset of all detonators at a given mine site. This is consistent with the agreed position of the experts as recorded at PJ [858]. The extract of Napier 3 at DSA [33] does not identify a textual hook within the 873 Patent to support Dyno's position to the contrary, let alone refer to any of the figures which Dyno now nominates at DSA [34].

Addressing each of those figures in turn:

- (a) Example 2 (figure 1) – Figure 1 is a stylised diagram. It is, in terms, a diagram that "*schematically illustrates a perspective view of the surface of an area of ground*" (p 29, emphasis added). Plainly, the schema of figure 1 is not a detailed picture of a mine site or any part of a mine site: it is in the nature of a diagrammatic representation of key features and relationships. The inclusion of this diagram cannot realistically be said to reflect any intention on the part of the

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<sup>6</sup> See also PJ [64]-[68].

patentee to limit the “*blast site*” of the claims to “*an area*” that is schematically represented and otherwise undefined.

- (b) Example 4 (figure 2a) – the same goes for figure 2a, which is also a “*schematic illustration*” (page 31). This figure is intended to show a ring blasting technique. It has nothing to do with limiting the extent of the term “*blast site*” as used in the claims.
  - (c) Example 6 (figure 4) – figure 4 is used to demonstrate “*a technique of half face sinking*” (p 35). The exemplification of one blasting technique says nothing of a limitation to the “*blast site*” of the claims.
15. Contrary to DSA [35], it makes no difference that the 873 Patent does not “*contemplate a ‘blast site’ involving unrelated areas*” within a mine, such as the different ‘levels’ or ‘locations’ identified by Mr Napier. Again, matters of “contemplation” must give way to proper claim construction. The fact is, the claims of the 873 Patent do not by way of text or context limit the “blast site” in the way propounded by Dyno. Rather, the context only supports Orica. The point of the 873 Patent is to be able to use wireless detonators in a mine, where radio signals can be sent to allow detonation of some, but not all, of the wireless detonators deployed in the mine. The need to avoid unintended detonation of devices at other locations throughout the mine is as, if not more, important as for a single location within the mine.
16. The matters in DSA [30]-[35] do not provide any reason for this Court to find error at PJ [1013]-[1015].

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