Form 122
Rules 36.01(1)(b); 36.01(1)(c)

Notice of Appeal

No. of 2025

Federal Court of Australia

District Registry: New South Wales

Division: General

On appeal from the Federal Court of Australia

Dyno Nobel Asia Pacific Pty Ltd ACN 003 269 010, Appellant

and

Orica Explosives Technology Pty Ltd ACN 075 659 353, First Respondent

Orica Australia Pty Ltd ACN 004 117 828, Second Respondent

Orica Limited ACN 004 145 868, Third Respondent

To the Respondents

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

1. The papers in the appeal will be settled and prepared in accordance with the Federal Court Rules Division 36.5.

2. The Court will 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:

Date:

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

Filed on behalf of (name & role of party) Dyno Nobel Asia Pacific Pty Ltd, the Appellant
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The Appellant (**DNAP**) appeals from declarations 1 and 2, certifications 3(a), 3(b) and 3(d), and orders 4, 5, 6, 7 and 8 of the Federal Court of Australia (Downes J) made on 24 July 2025 at Sydney in proceeding NSD345/2022 (**Orders**), consequent upon reasons for judgment published as *Dyno Nobel Asia Pacific Pty Ltd v Orica Explosives Technology Pty Ltd* [2025] FCA 767 (**J** or **Judgment**).

IN THIS NOTICE OF APPEAL:

Paragraph references are intended to be indicative, not exhaustive.

079 Patent means Australian Patent No. 2006225079.

079 Specification means the complete specification of the 079 Patent.

165 Patent means Australian Patent No. 2007246165.

165 Specification means the complete specification of the 165 Patent.

873 Patent means Australian Patent No. 2010207873.

873 Specification means the complete specification of the 873 Patent.

943 Patent means Australian Patent No. 2010302943.

943 Specification means the complete specification of the 943 Patent.

CGK means common general knowledge.

DNAP means the Appellant.

Orica means the Respondents.

Orica Documents means the documents reproduced in Confidential Annexure CJB-26 to the affidavit of Craig Boucher affirmed on 18 December 2023.

PSA means person skilled in the relevant art.

US527 means United States Patent Application No. 2010/0212527 entitled “Selective control of wireless initiation devices at a blast site”.

VM means voltage multiplication.

WO837 means International Patent Application No. WO2010/085837 entitled “Selective control of wireless initiation devices at a blast site”.

GROUNDS OF APPEAL

A. BEST METHOD (079 & 165 PATENTS)

1. The primary judge erred in finding (e.g., at J [608]) that DNAP had failed to establish that each of the 079 Specification and the 165 Specification did not disclose the best method known to the patent applicant of performing the invention, on the basis of what the primary judge regarded at J [572] to J [574] to be the best method case pleaded and identified in DNAP's opening submissions.

Particulars

1.1. Having found that:

(a) the "charge storage device" referred to in the claims and specification of the 079 Patent (and, by extension, the 165 Patent) must perform a VM function (J [274], [275], [281]);

(b) this was necessary to achieve the aim of eliminating the risk of inadvertent actuation of the base charge (J [577]);

(c) the "charge storage device" so construed was a "*combination of components working together to store electrical charge and multiply voltage*" (J [281]);

(d) the only examples of "charge storage devices" given in the 079 Specification (and, by extension, the 165 Specification) were devices which individually would be unable to perform a VM function (J [279]);

(e) Orica had knowledge of a particular combination of components working together to store electrical energy and multiply voltage which included as a component the VM means Orica had decided to use in its commercial embodiment (J [594], [603]-[605]);

(f) DNAP opened on a case that neither the 079 Specification nor the 165 Specification discloses *"any component(s) … to increase the below threshold voltage or current to the threshold voltage or current required to actuate the base charge"* (J [572(2)]) nor *"any means by which…voltage multiplication is to be controlled*" (J [572(3)]); and

(g) DNAP opened on a case that "*the Orica Documents confirm that, before the filing dates of each of the 079 and 165 patents, the patent applicant…knew of a way of constructing the invention (and had taken the invention to a more satisfactory stage than what is disclosed)…which embodiment is…inconsistent with what is described in the 079 and 165 patents; or in any*

event, not described in the 079 and 165 specifications at all, or in such a way as to meet the requirements of s 40(2)(a)…" (J [574(2)]),

the primary judge ought to have found that the best method requirement was not met, including on the basis that there is no disclosure in the 079 Specification or the 165 Specification of:

(h) any "*combination of components working together to store electrical charge and multiply voltage*" and/or any means by which such VM is to be controlled; or

(i) the VM means Orica had decided to use in its commercial embodiment, including the means by which such VM is to be controlled.

1.2. The primary judge erred in characterising the inventions in the 079 Patent and the 165 Patent, or their "essence", as being concerned, or concerned only, with the "*architecture*" of features in the system and as not being concerned with "*how the VM works*" or directed towards specific VM means (J [576], [577], [580]).

1.3. The primary judge erred in failing to find that VM means is part of the invention in the 079 Patent and the 165 Patent and/or contributes to the advantages of the invention, including improved safety (e.g., at J [576], [577], [580]).

1.4. The primary judge erred in holding that DNAP's best method case was premised on an incorrect construction of "charge storage device" in the claims of the 079 Patent and the 165 Patent or (implicitly) was not consistent with the construction of "charge storage device" referred to at J [281] (J [601(1)]).

1.5. The primary judge erred in finding that DNAP's best method case was premised on an incorrect characterisation of the inventions in the 079 Patent and the 165 Patent and erred in failing to have regard, or failing to have adequate regard, to the teaching of the 079 Patent and the 165 Patent that the inventions are directed (at least in part) to overcoming safety concerns, including the risk of inadvertent or accidental actuation of the base charge and safety issues with known systems (J [576]-[579], [588], [599], [601(2)], [607]).

1.6. The primary judge erred in finding with respect to the "*references in the Field of the Invention and Summary of the Invention in the 079 Patent to eliminating the risk of inadvertent actuation of the base charge*" that such "*eliminating the risk*" is "*achieved by having a power source with sub-threshold voltage and requiring a supra-threshold voltage to actuate the base charge, and the use of a charge storage device functioning as a VM*" (J [577]), in that:

(a) those matters do not eliminate the risk; and

(b) by reason of sub-paragraph (a), further safety measures remain relevant to the best method of performing the invention, such as aspects of the VM means described in the confidential Orica Documents that are relevant to safety (including relevant to mitigating the risk of inadvertent or accidental actuation of the base charge).

1.7. The primary judge erred in finding (at J [578]) in relation to the 165 Patent that there were merely "*passing references to safety*" (and ought to have found that the 165 Patent is directed to a safe wireless electronic booster) and erred in failing to find that means to improve safety, including via the VM means, were part of the best method of performing the invention of the 165 Patent.

1.8. The primary judge erred in finding, to the extent that her Honour so found, that the VM means described in the confidential Orica Documents, were matters of CGK or could otherwise have been implemented by the skilled person as a matter of routine, and, further or in the alternative, in finding that this meant that the VM means known to Orica did not need to be disclosed as part of the best method (J [577], [583]-[584], [590], [602]-[606]).

1.9. The primary judge erred in applying an incorrect test to the effect, first, that there "*is no subjective element in the best method requirement*" (J [571]), but, secondly, that Orica must be shown to have had subjective knowledge that the embodiment described in the confidential Orica Documents was "best" (J [599], [607]), the correct test being whether it was the best embodiment of the invention subjectively known to Orica at the relevant time.

1.10. The primary judge erred in finding that DNAP's case depended upon evidence given by Mr Boucher concerning the confidential Orica Documents that was undermined by the matters identified by the primary judge at J [564]-[565], [567]-[568] and [601], and further or alternatively erred in making the criticisms of that evidence indicated in those paragraphs, and the criticisms at J [51]-[55], and using those criticisms to reduce the weight given to Mr Boucher's evidence as to the best method case.

1.11. The primary judge erred in failing to have regard to, or to draw an inference from (J [568]), the fact that Orica chose not to adduce evidence concerning the confidential Orica Documents from any of the named inventors, any author of the Orica Documents or Mr Papillon (who, unlike Professor Skafidas, had experience with detonators before the priority date).

1.12. The primary judge erred in finding that the embodiment identified in the confidential Orica Documents (being an embodiment including components performing a VM function and means by which such VM is to be controlled) did not need to be disclosed in the 079 Specification and the 165 Specification on the basis that it depended upon choice of detonator or other components (J [580], [590], [603]-[606]).

1.13. DNAP reserves the right to provide further particulars.

2. Further or alternatively, the primary judge erred in finding that it was not open to DNAP to advance certain aspects of its best method case identified in its closing submissions.

Particulars

2.1. The primary judge erred in holding that the best method case identified in DNAP's closing submissions had not been pleaded or particularised, either at all or with adequate particularity, and that it would be contrary to the interests of justice to permit it to succeed (J [555]-[561], [570], [574], [587]).

2.2. The primary judge erred in holding, or proceeding on the basis, that Orica's subjective understanding of the best method case identified in DNAP's closing submissions was relevant to, or determinative of, whether that case had been adequately pleaded or particularised (J [554], [561]).

2.3. The primary judge erred in holding that DNAP's approach to pleading and conducting its best method case caused or was likely to cause prejudice to Orica, including in circumstances where Orica did not lose the opportunity to adduce evidence of any additional material facts and did not identify any matter in respect of which it lost the opportunity to adduce evidence (J [553], [554], [558], [561]).

2.4. The primary judge erred in failing to have regard to, or alternatively failed to give any weight or sufficient weight to, the fact that Orica did have the opportunity to, and did through Professor Skafidas, file evidence in answer to Mr Boucher's evidence in his affidavit affirmed on 18 December 2023, including its Confidential Annexures CJB-26 and CJB-27, and the fact that there was no reply evidence or a joint expert report topic relating to those matters.

2.5. DNAP reserves the right to provide further particulars.

3. The primary judge erred in failing to find that the case identified in DNAP's closing submissions demonstrated that each of the 079 Specification and the

165 Specification did not disclose the best method known to the patent applicant of performing the invention.

Particulars

3.1. DNAP repeats the particulars to ground 1, above.

3.2. The primary judge erred in finding that part of the case identified in DNAP's closing submissions failed (J [591]), [599]), and otherwise in failing to consider the balance of the case identified in DNAP's closing submissions (by reason of the error the subject of ground 2, above).

3.3. The primary judge erred in failing to find that the best method of performing the invention known to the patent applicant at the filing date of each of the 079 Patent and the 165 Patent included [redacted] and, further, that such [redacted] was not disclosed in the 079 Specification and the 165 Specification therein, and further was inconsistent with that disclosure.

3.4. The primary judge erred in failing to find that [redacted] provides an extra level of safety and/or that [redacted] (J [588]-[589]).

3.5. The primary judge (J [588]-[589]) erred in failing to have regard, or failing to have adequate regard, to the context in which the evidence of Mr Papillion reproduced at J [588] was given, and other relevant evidence, including without limitation the exchange between Mr Papillion and counsel recorded at T530.36-T532.11.

3.6. The primary judge erred in failing to have regard, or give any or sufficient weight, to the fact that Orica conceded (T1072.16-19) that a core assumption underlying Professor Skafidas' opinion evidence concerning the Orica Documents was incorrect [redacted].

3.7. DNAP reserves the right to provide further particulars.

B. 943 PATENT

B.1. Manner of Manufacture

4. The primary judge erred in failing to find that the invention claimed in each of claims 1 to 21 of the 943 Patent is not a manner of manufacture within the meaning of s 6 of the *Statute of Monopolies* by reason that the 943 Patent does not disclose an invention on the face of the specification (e.g., J [1243]).

Particulars

4.1. The primary judge correctly observed that:

(a) Orica admitted, without qualification, that WO837 was incorporated by reference into the 943 Patent (J [1186]); and

(b) Orica admitted that the specification of WO837 is "*substantially identical to the body of the specification of the 873 patent*", claims 1 to 15 of WO837 are "*substantially identical to claims 1 to 15 of the 873 patent*" except that "*the difference between the claims of the 873 patent and WO837 is that the 873 patent includes as claim 16 a claim that is not included in WO837*" (J [1187]).

4.2. In light of the admissions in sub-paragraph 4.1, above, and having regard to the matters disclosed on the face of the 943 Specification, the primary judge ought to have found that the matters in WO837 were admitted to be "known" within the meaning of *Commissioner of Patents v Microcell Limited* (1959) 102 CLR 232*, NV Philips Gloeilampenfabrieken v Mirabella International Pty Ltd* (1995) 183 CLR 655 and ***Merck*** *& Co Inc v Arrow Pharmaceutical Ltd* (2006) 154 FCR 31 (J [1190]-[1206]).

4.3. The primary judge erred in determining that the relevant test for "known" is "well-known and well-understood" (J [1193]):

4.4. The primary judge erred (J [1192]-[1206]) in failing, or failing properly, to assess whether on the face of the 943 Specification, the subject matter of the claims of the 943 Patent disclosed an invention, including by failing to take into account the principle that a necessary element of "newness" lies in comparing the invention claimed in the 943 Patent with the information contained in the 943 Specification, including WO837 and (its corresponding United States Patent Application, US527), each of which are incorporated by reference into the 943 Specification.

4.5. The primary judge erred in failing to consider whether, and in failing to find that, the 873 Specification (and therefore WO837) discloses methods of blasting involving pre-charging with and selective control of wireless detonator devices (including, when such terms are properly construed, wireless detonator assemblies and wireless electronic boosters (see grounds 6 to 8, below)), those methods including each feature of each of claims 1 to 8 and 21 of the 943 Patent, such that none of those claims 1 to 8 or 21, is to a new or inventive combination of features or method on the face of the 943 Specification.

4.6. The primary judge erred in failing to consider whether, and in failing to find that, Figures 2a to 2h and their accompanying descriptions in the 943 Specification, disclose methods of blasting involving pre-charging with and selective control of wireless detonator devices (including wireless detonator assemblies and wireless electronic boosters, which are defined and described in WO837 in substantially identical terms as in the 943 Patent), those methods including each feature of each of claims 9 to 20 of the 943 Patent, such that none of those claims 9 to 20 is to a new or inventive combination of features or method on the face of the 943 Specification.

4.7. Further or in the alternative, the primary judge ought to have applied *Merck* (cf, J [1196]-[1197]), and relevantly found that when the PSA considers the 943 Specification, as compared to the information with WO837, the 943 Specification does not disclose a new substance, or a new characteristic of a known substance, or a new use or a new method.

4.8. DNAP reserves the right to provide further particulars.

B.2 Inventive Step

5. The primary judge erred in failing to find that the invention claimed in each of claims 1 to 21 of the 943 Patent was obvious and did not involve an inventive step, on the basis of CGK alone (J [1278]).

Particulars

5.1. The primary judge erred in narrowly construing the PSA for the 943 Patent, and consequently excluding matters that should have been found to be CGK, including:

(a) by improperly limiting the PSA of the 943 Patent, and consequently excluded knowledge of caving methods from the PSA's CGK, despite finding that the 943 Patent claimed methods that "*include caving methods within their scope*" (J [1080]);

(b) in rejecting Mr Dunstan's evidence as to caving methods and not finding that his frustrations with wired electronic detonators were part of the CGK and/or reflected the understanding and motivations of the PSA as at the priority date of the 943 Patent (J [1076]-[1085], [1109]-[1111], [1148], [1258]);

(c) characterising Mr Dunstan's experience and knowledge as "*specialised*" and thus not forming part of the CGK (J [1101], [1148], [1155], [1258]);

(d) in finding that Mr Grace was "*more experienced than Mr Dunstan in hands-on blasting experience using EDs*" (J [1112]), and relying on that finding to give less weight to the evidence of Mr Dunstan;

(e) failing to find that Mr Grace was not responsible for designing blasts or carrying out new underground mining methods, and therefore did not have a practical interest in the claimed methods of the 943 Patent (J [1069]-[1075], [1120]);

(f) in finding that pre-charging was not part of the CGK, including because of the regulatory restrictions associated with pre-charging (J [1115], [1138]-[1144], [1149]-[1154], [1250]);

(g) further to sub-paragraph (f), above, in finding that the PSA would have a "*conservative mindset*" such that the primary judge preferred the evidence of Mr Meneghini and Mr Grace in respect of whether the PSA would attempt pre-charging with a wireless electronic detonator (ED) over the evidence of Mr Dunstan, who was the only expert who had ever conducted pre-charging, because the primary judge characterised him as having an "*innovative mindset*" (J [1271]);

(h) in finding that the PSA had not considered or would not have considered, or would not have been motivated to consider, communicating wirelessly with detonators before the priority date (J [1118]-[1121], [1268]-[1269]), and in failing to find that the concept of wireless electronic detonators (EDs) was CGK as at the priority date (J [1115]-[1120]); and

(i) in finding that the PSA would not have contemplated mining at the 943 Patent priority date "*in any sequence other than a linear sequence*" (J [1134]-[1136], [1250], [1267], [1270]).

5.2. The primary judge erred in giving Mr Dunstan's evidence in response to the Task "*no weight*" (J [1265]), and mischaracterised Mr Dunstan's evidence as to motivation (summarised, in part, in J [1098]-[1101]), and ought to have found that a PSA working in the field who had considered the problem addressed by the

alleged invention considered the alleged invention as an advantageous and desirable method of blasting (J [1249]-[1252] and [1259]).

5.3. The primary judge erred in relying on a finding that the PSA would not have been able to "*procure and use*" a wireless electronic detonator of the kind made commercially by Orica after the priority date of the 943 Patent (i.e., as a matter of commercial reality), and that Mr Dunstan did not have Orica's product (i.e., as a matter of commercial reality) until 2017, as supporting the (erroneous) finding that the Task was "*based on an incorrect premise*" (J [1260], [1261], [1264], [1265]).

5.4. The primary judge erred in finding the methods claimed in the claims of the 943 Patent did not lack an inventive step because of her Honour's finding that a wireless electronic detonator was not commercially available at the priority date and thus was not part of the CGK (J [1117], [1245]-[1248], [1264]-[1265], [1271], [1273]), including because those findings were affected by the errors of construction the subject of one or more of grounds 6-8, below.

5.5. The primary judge erred at J [1245] in assessing the characteristics of the skilled addressee, the content of CGK and the lack of inventive step against an erroneous construction of the terms "wireless detonator assembly", "wireless electronic booster" and "top box", in the claims and/or specification of the 943 Patent, as set out in grounds 6-8, below.

5.6. The primary judge erred in failing to find that the effect of Mr Grace and Mr Dunstan's agreement in the joint report, undisturbed in cross-examination, is that claims 1, 2, 6, 7, 8, 9, 10, 12, 13, 14, 18, 19 and 20 of the 943 Patent (with the exception of pre-charging/stranded portion of rock mass) were CGK and, accordingly, that claims 1 to 21 lack an inventive step in light of the CGK alone (J [1253]-[1256], [1272]-[1278]).

5.7. The primary judge erred by failing to properly consider Mr Dunstan's evidence as to how he would have moved from that CGK to the claimed invention upon being provided with the Task (J [1257]-[1276]) and ought to have found that the evidence showed that the claimed invention lacked an inventive step.

5.8. DNAP reserves the right to provide further particulars.

C. CONSTRUCTION ERRORS RELEVANT TO GROUNDS 4 AND 5

6. The primary judge erred in construing the term "wireless detonator assembly" as used in the 079 Patent, the 165 Patent and the 943 Patent.

Particulars

6.1. The primary judge erred in finding (J [239]) that a "wireless detonator assembly", in the 079 Patent, is a "*wholly wireless discrete unit, being a unit which has no physical wires between that unit and the blasting machine or power source*".

6.2. The primary judge erred in finding (J [241]) that a "wireless detonator assembly", in the 079 Patent, is confined to an assembly which includes an electronic detonator, and does not include an assembly which encompasses a detonator that is not an electronic detonator.

6.3. The primary judge erred in adopting an incorrect anterior construction of the term "blasting machine", used in the definition of "wireless detonator assembly", in the 079 Patent, as a blasting machine specifically for use with, and only with, an electronic detonator, rather than an electronic detonator assembly (J [243]).

6.4. In construing the term "wireless detonator assembly", in the 079 Patent, the primary judge incorrectly accepted, or was disproportionately influenced by, the evidence of Mr Papillon (J [238], [240], [243] last sentence and [246]-[249]).

6.5. The primary judge erred (e.g., at J [1245]) in adopting the same (erroneous) construction of "wireless detonator assembly" from the 079 Patent, as referred to in particulars 6.1 to 6.4, above, with respect to the term "wireless detonator assembly" used in the claims and specification of the 165 Patent.

6.6. The primary judge erred (e.g., at J [1245]) in adopting the same (erroneous) construction of "wireless detonator assembly" from the 079 Patent, as referred to in particulars 6.1 to 6.4, above, with respect to the term "wireless detonator assembly" used in the claims and specification of the 943 Patent, including failing to adopt the broad definition of "wireless detonator assembly" at p 12, line 27 to p 13, line 17 of the 943 Specification.

6.7. The definition of "wireless detonator assembly" at p 12, lines 27-31 of the 943 Specification is not limited to including an electronic detonator.

6.8. The definition of "blasting machine" at p 10, lines 1-8 of the 943 Specification is not limited to machines capable of signal control with electronic detonators.

6.9. DNAP reserves the right to provide further particulars.

7. The primary judge erred (at J [260]-[262]) in construing the term "top-box" as used in the 079 Patent, the 165 Patent and (impliedly) the 943 Patent (at [1245(1)]), as being limited to a component that will be destroyed, or always destroyed, in the blast.

Particulars

7.1. The definitions of “top-box” at pp 14-15 of the 079 Specification and p 11, lines 8-15 of the 165 Specification do not include any such limitation and are entirely neutral as to whether a “top-box” will be destroyed, or always destroyed, in a blast.

7.2. The witness evidence referred to at J [260] provided no basis for implying such a limitation.

7.3. The 943 Specification does not define “top box” at all, let alone using the same or a similar definition to those included in the 079 Specification and the 165 Specification.

7.4. DNAP reserves the right to provide further particulars.

8. The primary judge erred (J [653]-[654]) in construing the term “wireless electronic booster” as used in the 165 Patent and the 943 Patent, and the term “detonator” as used in the 165 Patent, as being confined to an electronic detonator.

Particulars

8.1. The finding with respect to “wireless electronic booster” in the 165 Patent was based upon the error in relation to the construction of the expression “blasting machine” in the 079 Patent, as set out in particular 6.3, above.

8.2. The finding involved allowing the experts to stray into the Court’s task of construing the patent as a legal instrument, rather than the experts merely providing assistance to the Court as to how a person skilled in the art would read terms of art within it.

8.3. The finding involved rejecting the experts’ oral evidence in the concurrent evidence session on the basis that it had already been decided that the oral evidence was plainly wrong, in circumstances where there was no rational basis to prefer the experts’ affidavit evidence over their oral evidence.

8.4. The primary judge erred (e.g., at J [1273], [1286]) in adopting the same (erroneous) definition of “wireless electronic booster” from the 165 Patent, as referred to in particulars 8.1 to 8.3, above, with respect to the term “wireless electronic booster” used in the claims and specification of the 943 Patent, including failing to adopt the broad definition of “wireless electronic booster” at p 13, line 18 to p 14, line 8 of the 943 Specification.

8.5. The definition of “wireless electronic booster” at p 13, lines 18-23 of the 943 Specification is not limited to including an electronic detonator.

8.6. DNAP repeats particular 6.8, above.

8.7. DNAP reserves the right to provide further particulars.

D. UNJUSTIFIED THREATS

9. The primary judge erred in failing to find that Orica made an unjustified threat within the meaning of s 128(1) of the *Patents Act 1990* (Cth) (J [1308], [1321]-[1324]).

Particulars

9.1. Having correctly recorded Orica's admission that the letter sent by Orica's solicitors to DNAP dated 4 May 2022 was a threat in respect of the 165 Patent (J [1309], [1322]), the primary judge:

(a) erred in finding that such threat was justified, by reason of the primary judge's errors in respect of the validity of the 165 Patent (see grounds 1 to 3, above); and

(b) should have found that, consequent on grounds 1, 2 and/or 3 above, the 165 Patent, is and was at all times invalid, and thus, the 4 May 2022 letter constituted an unjustified threat under s 128(1) of the *Patents Act 1990* (Cth).

9.2. DNAP reserves the right to provide further particulars.

DNAP advances the following additional ground of appeal pursuant to leave granted by order 2 of the orders made by Downes J on 21 August 2025 in Federal Court of Australia Proceeding No. NSD345/2022:

E. INFRINGEMENT

10. The primary judge erred in finding that, by exploiting, threatening to exploit, using, supplying and/or threatening to supply the CyberDet I Detonators at sites in the Patent Area, DNAP has infringed and/or threatened to infringe each of claims 1, 2, 3, 5, 12, 13, 16, 25, 26, 30 and 31 of the 079 Patent, claims 1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 23, 26, 27, 28 and 29 of the 165 Patent, and claims 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 14, 19 and 20 of the 943 Patent (collectively, the **Asserted Claims**).

Particulars

10.1. As set out in grounds 1 to 5, above, the primary judge erred in finding that each of the 079 Patent, 165 Patent and the 943 Patent is valid.

10.2. Having made the errors in particular 10.1, above, the primary judge erred in finding that each of the Asserted Claims of the 079 Patent, the 165 Patent and the 943 Patent was infringed by DNAP making, supplying, using or otherwise exploiting the CyberDet I Detonators.

10.3. DNAP reserves the right to provide further particulars.

ORDERS SOUGHT

1. The appeal be allowed.
2. Declarations 1 and 2, certifications 3(a), 3(b) and 3(d), orders 4, 5, 6, 7 and 8, and notes 16 and 17 of the Orders of the primary judge in Proceeding NSD345/2022 dated 24 July 2025 be set aside.
3. A declaration that claims 1 to 33 of Australian Patent No. 2006225079 are, and have at all material times been, invalid.
4. A declaration that claims 1 to 31 of Australian Patent No. 2007246165 are, and have at all material times been, invalid.
5. A declaration that claims 1 to 21 of Australian Patent No. 2010302943 are, and have at all material times been, invalid.
6. Pursuant to section 138 of the *Patents Act 1990* (Cth), an order revoking each of:
   (a) claims 1 to 33 of Australian Patent No. 2006225079;
   (b) claims 1 to 31 of Australian Patent No. 2007246165; and
   (c) claims 1 to 21 of Australian Patent No. 2010302943.
7. A declaration pursuant to section 128(1)(a) of the *Patents Act 1990* (Cth) that the threat made by each of the Respondents, jointly and severally, on 4 May 2022, as identified in [1309] and [1321]-[1324] of the reasons for judgment delivered on 14 July 2025 by Downes J in proceeding No. NSD345/2022, was unjustified.
8. Pursuant to section 128(1)(b) of the *Patents Act 1990* (Cth), an order that each of the Respondents, whether by themselves, their servants, agents or otherwise howsoever be restrained from continuing to make or making the threat made on 4 May 2022, as identified in [1309] and [1321]-[1324] of the reasons for judgment delivered on 14 July 2025 by Downes J in Proceeding No. NSD345/2022, or any other threat similar thereto with respect to any of Australian Patents Nos. 2006225079, 2007246165, 2010207873 or 2010302943.

9. Proceeding No. NSD345/2022 be listed for a case management hearing on a date to be fixed for the making of any directions in relation to lump sum costs and the Applicant/Cross-Respondent's claim for pecuniary relief, including damages for unjustified threats pursuant to section 128(1)(c) of the *Patents Act 1990* (Cth).

10. The Respondents' cross-claim be dismissed.

11. The Respondents pay the Appellant's costs of the appeal, the Appellant's costs of Proceeding No. NSD345/2022, and the Appellant's costs of Proceeding No. NSD514/2022.

Appellant's address

The Appellant's address for service is:

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

Email: duncan.longstaff@spruson.com

The Appellant's address is Level 8, 28 Freshwater Place, Southbank, Victoria, 3006.

Service on the Respondents

It is intended to serve this application on all Respondents.

Date: 21 August 2025

Signed by Duncan Roland Longstaff
Lawyer for the Appellant, Dyno Nobel Asia Pacific Pty Ltd