

## NOTICE OF FILING AND HEARING

### Filing and Hearing Details

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EXPLOSIVES TECHNOLOGY PTY LTD ACN 075 659 353 & ORS  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA  
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*Sia Lagos*

Registrar

### Important Information

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 date of the filing of the document is determined pursuant to the Court's Rules.

Form 123  
Rule 36.21(1)



## Notice of cross-appeal and contention

No. NSD 1484 of 2025

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

On appeal from the Federal Court

**Dyno Nobel Asia Pacific Pty Ltd** (ACN 003 269 010)

Appellant

**Orica Explosives Technology Pty Ltd** (ACN 075 659 353) and others named in the schedule

Respondents

**Orica Australia Pty Ltd** (ACN 004 117 828)

Cross-appellant

**Dyno Nobel Asia Pacific Pty Ltd** (ACN 003 269 010)

Cross-respondent

To the Appellant/Cross-respondent

The Second Respondent/Cross-appellant appeals from part of the judgment or the order as set out in this notice of cross-appeal and contention.

The papers in the cross-appeal will be settled before a Registrar at the time and place to be advised.

Date:

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

.....  
Filed on behalf of (name & role of party) The Cross-appellant / Second Respondent  
Prepared by (name of person/lawyer) Ian Pascarl and Miriam Zanker  
Law firm (if applicable) Davies Collison Cave Law Pty Ltd  
Tel (03) 9254 2888 Fax (03) 9254 2880  
Email [IPascarl@dcc.com](mailto:IPascarl@dcc.com) / [MZanker@dcc.com](mailto:MZanker@dcc.com)  
**Address for service** Level 28, 500 Bourke Street, Melbourne VIC 3000  
(include state and postcode) .....



The Cross-appellant/Second Respondent (**Orica**) appeals from part of the judgment of the Federal Court given on 14 July 2025 at Sydney, and Orders 7(a)(ii) and 10 of the orders made on 24 July 2025, insofar as they relate to Australian Patent No. 2010207873 (**873 Patent**).

Further, Orica contends that the judgment insofar as it relates to Australian Patent No. 2010302943 (**943 patent**) should be affirmed on grounds other than those relied on by the Court as identified below.

### **Details of cross-appeal and contention**

The cross-appeal concerns the primary judge's findings that the Appellant/Cross-respondent (**DNAP**) did not infringe the claims of the 873 Patent; see *Dyno Nobel Asia Pacific Pty Ltd v Orica Explosives Technology Pty Ltd* [2025] FCA 767 at [994]-[1033].

### **Grounds of cross-appeal – 873 Patent**

1. The primary judge erred in finding that certain uses of CyberDet I Devices did not infringe claim 1 of the 873 Patent.

#### **Particulars**

- a. In addressing infringement of claim 1 of the 873 Patent, to the extent the primary judge at [1016] confined her consideration to Orica's pleaded case, the primary judge erred, having earlier correctly identified at [995(2)] that Orica's infringement case also included its "informal" infringement case, on which it opened without objection.
- b. The primary judge correctly construed claim 1 at [865] as meaning "*there is no limitation as to the means by which the determination process is required to be performed*" (emphasis added), and that performing the method of claim 1 only required the outcome by which "*the device know[s] it is intended to execute the intended operation*".
- c. The primary judge correctly found (at [1000]-[1006]):

i.

[REDACTED]

ii.

[REDACTED]

iii.

[REDACTED]



[REDACTED]

[REDACTED]

iv. [REDACTED]

[REDACTED]

[REDACTED]

v. [REDACTED]

[REDACTED]

[REDACTED]

d. The primary judge erred at [1016]-[1018] by introducing limitations absent from claim 1, and contrary to her Honour's construction at [865], as to the means by which the determination process was to be performed, specifically:

i. The primary judge found that the devices did not undertake a determination process "*on the basis of information included in the wireless command signal*" (at [1017]), in circumstances where infringing devices did not need to undertake the determination process by reference to the information in a signal in order to infringe claim 1.

ii. The primary judge erred at [1018] in relying on the finding that the [REDACTED] "*does not constitute information which a CyberDet I Device can use to determine whether it is part of the predetermined group*", being the same error as identified with respect to [1017] described above.

iii. To the extent that the primary judge relied on the finding at [1016] that the [REDACTED] "*is not compared with any data element included in received wireless command signals*" in finding claim 1 was not infringed, the primary judge erred, because the determination process did not need to involve 'comparison' to a data element in order to infringe claim 1.

e. Further and alternatively the primary judge erred in making the finding at [1018] referred to at paragraph (d)(ii) above, because the [REDACTED] constituted information that was essential to members of the predetermined group being able to decrypt the encrypted commands, thereby determining that they are to execute those commands and therefore are members of the predetermined group.

2. The primary judge erred in finding certain uses of CyberDet I Devices did not infringe claim 2 of the 873 Patent.



### Particulars

- a. The primary judge erred at [1020] in rejecting Orica's case in relation to claim 2 for the same reason as her Honour rejected the case in relation to claim 1, as set out above.
  - b. Having correctly found at [877]-[883] that the comparison of the group identification component with a stored group identification in claim 2 did not require that they match, provided that the devices could "*process the incoming group identification components to appropriately determine their relevancy*", the primary judge erred at [1026]-[1027] in finding that the [REDACTED] was not compared with the [REDACTED] within the meaning of claim 2.
3. The primary judge erred in finding certain uses of CyberDet I Devices did not infringe claim 4 of the 873 Patent.

### Particulars

- a. The primary judge erred at [1028] in rejecting Orica's case in relation to claim 4 for the same reason as her Honour rejected the case in relation to claim 2, as set out above.
  - b. The primary judge erred at [1029] in relying on a finding that the [REDACTED] and the [REDACTED] do not "correspond", in circumstances where DNAP's case at trial was confined to reliance on the non-infringement argument with respect to claim 2.
  - c. Further and alternatively, the primary judge erred in making the finding at [1029] noted above in that by reason of the function of the [REDACTED] and [REDACTED] discussed at paragraph (1)(c) above, they "correspond" within the meaning of claim 4.
4. The primary judge erred in finding certain uses of CyberDet I Devices did not infringe claims 3, 6, 8, 9, 11, 13 and 15 of the 873 Patent.

### Particulars

- a. The primary judge erred at [1031] in rejecting Orica's case in relation to claims 3, 13 and 15 for the same reason as her Honour rejected the case in relation to claim 1, as set out above.
- b. The primary judge erred at [1032] in rejecting Orica's case in relation to claims 6,



8, 9 and 11 for the same reason as her Honour rejected the case in relation to claim 2, as set out above.

5. The primary judge erred in failing to find that the blasts identified at paragraph 41.32 in Confidential Annexure A to Orica's closing submissions at trial used the methods of claims 1 to 4, 6, 8, 9, 11, 13 and 15 of the 873 Patent.
6. The primary judge erred in excluding Orica's costs in relation the 873 Patent from Order 7(a)(ii) made on 24 July 2025.

#### **Ground of contention – 943 Patent**

7. The findings of the primary judge at [1198] to [1206] and [1243] should be affirmed on the additional grounds that:
  - a. the invention claimed in the 943 Patent is a manner of manufacture when compared with the information disclosed in WO 2010/085837 (**WO 837**); and
  - b. in any event, pursuant to s 24 of the *Patents Act 1990* (Cth), the Court was required to disregard any information made publicly available through any publication of the invention by the patentee in WO 837.

#### **Orders sought**

1. The cross-appeal be allowed.
2. A declaration that the Appellant/Cross-respondent has infringed each of claims 1 to 4, 6, 8, 9, 11, 13 and 15 of the 873 Patent by using CyberDet I Detonators in the method of blasting used to conduct the blasts identified at paragraph 41.32 in Confidential Annexure A to Orica's closing submissions at trial.
3. An injunction restraining the Appellant/Cross-respondent, whether by itself, its directors, servants, agents, officers, Related Bodies Corporate, Associated Entities or howsoever otherwise, from infringing claims 1 to 4, 6, 8, 9, 11, 13 and 15 of the 873 Patent during the term of the 873 Patent, including by:
  - a. using CyberDet I Detonators to carry out blasts in accordance with the methods claimed in one or more of claims 1 to 4, 6, 8, 9, 11, 13 and 15 of the 873 Patent, in the patent area; and
  - b. supplying CyberDet I Detonators in the patent area:
    - i. in circumstances where it has reason to believe that they will be used to



carry out blasts in accordance with the methods claimed in one or more of claims 1 to 4, 6, 8, 9, 11, 13 and 15 of the 873 Patent,

- ii. in conjunction with any instructions or inducements to carry out blasts in accordance with one or more of the methods claimed in 1 to 4, 6, 8, 9, 11, 13 and 15 of the 873 Patent,

without the licence or authority of Second Respondent/Cross-appellant.

4. Vary Order 7(a)(ii) made on 24 July 2025 by deleting the words “except as referable specifically to the alleged infringement of the 873 Patent”.
5. The Appellant/Cross-respondent pay the Second Respondent/Cross-appellant’s costs of the cross-appeal.

#### **Second Respondent/Cross-appellant’s address**

The Second Respondent/Cross-appellant’s address for service is:

Place: Davies Collison Cave Law Pty Ltd  
Level 28, 500 Bourke Street  
Melbourne, Victoria, 3000

Email: [IPascal@dcc.com](mailto:IPascal@dcc.com) / [MZanker@dcc.com](mailto:MZanker@dcc.com)

The Second Respondent/Cross-appellant’s address is 1 Nicholson Street, East Melbourne, Victoria, 3002.

#### **Service on the Appellant/Cross-respondent**

It is intended to serve this notice of appeal and contention on the Appellant/Cross-respondent.

Date: 11 September 2025

A handwritten signature in black ink that reads 'M. P. Zanker'.

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Signed by Miriam Zanker  
Lawyer for the Second Respondent/Cross-appellant

**Schedule**

No. NSD 1484 of 2025

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

**Respondents**

Second Respondent: Orica Australia Pty Ltd (ACN 004 117 828)  
Third Respondent: Orica Limited (ACN 004 145 868)

Date: 11 September 2025