

14 April 2019

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By email

Dear Carina

Scaw Metals and Haggie Reid

Anti-circumvention inquiry – wire ropes from South Africa

We refer to BBRG's submission dated 8 April 2019.

The Commission must recognise that BBRG's submission distorts the facts and continues to misrepresent both our clients' wire rope products and its clearly stated position in this matter.

We request the Commission to maintain objectivity and good sense.

1 Higher nine strand fill factor is a fact

BBRG repeats its assertion *that "6 strand wire rope contain[s] the highest fill factor"*. This is based on BBRG's own reverse-engineered predictions of our clients' ropes.

We have already shown BBRG's reverse-engineering to be significantly inaccurate, disingenuous, and misrepresentative of our clients' actual ropes.¹

Our clients' nine strand wire rope has a higher fill factor than the goods subject to anti-dumping measures.² This is a fact, which we have established.

Accordingly, our client is astonished by BBRG's statement that it *"view[s] the commentary in the Scaw/Haggie submission as a distraction from the facts"*.³ There is simply no need to entertain and certainly no grounds to accept BBRG's mere guesswork on this subject.

¹ EPR 012, pages 3 and 4, and pages 6 to 8.

² *Ibid*, pages 3 and 4.

³ EPR 027, page 1.

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2 Breaking force evidence cannot simply be disregarded

BBRG asserts the Commission is correct to disregard the breaking force of one of our clients' ropes. How can that be correct? The breaking forces of all of our clients' ropes forms part of the body of evidence the Commission must consider. Advocating a selective disregard for evidence is a sure sign that the advocate does not like what the evidence demonstrates.

3 Clear likelihood of more than a slight difference

BBRG is correct that our clients' submission of 12 March 2019 is "*critical of the Commission's analysis*" of fill factor. The misunderstanding, in the published Statement of Essential Facts ("SEF"), of that basic concept indicates a failure to grasp wire rope technology. And that is why our clients' submission critiques what is said in the SEF.

The Commissions' technical shortcomings are understandable. Wire rope is a niche technology within the purview of wire rope experts, and wire rope performance is best judged by those who are experienced in its usage. Our clients commend the Commission's engagement of the Mining Electrical and Mining Mechanical Engineering Society ("MEMMES"). The MEMMES report contains facts and opinions that have been put forward independently and objectively. Nine strand wire rope usage in mining applications is new. In so far as an expert does not have proprietary information and field testing experience available to him or her, that expert will apply knowledge and experience to provide the opinions requested of him or her. That is not a ground for the opinions to be totally dismissed.

In an administrative investigation such as this a decision maker will frequently and validly turn to an expert for the purposes of establishing the likelihood of a fact, matter or thing, to an appropriate administrative standard. And if that likelihood is not achieved, that does not mean that the opposing view is to be preferred. Our clients' bear no legal burden to disprove what the applicant has said against them.

The MEMMES report has value in this investigation and should not be dismissed as the Commission has done. But if the Commission remains unsatisfied with the MEMMES report, the solution is not to accept the un-evidenced and disproven arguments of the applicant.

4 Different characteristics impart different performance

We have already provided the Commission with the wire rope constructions of our clients' 6, 8 and 9 strand ropes, and shown that the rope construction of nine strand wire rope results in increased strength, abrasion resistance and flexibility.⁴ This is consistent with the MEMMES report.

There is no reason to entertain the "reverse-engineered" rope constructions on page 5 of BBRG's 8 April 2019 submission. Indeed, the Commission will note that these "reverse-engineered" rope constructions differ from the ropes "reverse-engineered" in BBRG's 9 October 2018 submission.

5 Nine strand wire ropes advance the prior art

Claim 1 of our client's patent defines "*a dragline rope including an independent core and at least nine outer strands wound around the independent core*".

⁴ See confidential email from Moulis Legal to the Commission dated 16 November 2018, Attachment 4.

Never before in the history of wire ropes has a dragline rope ever had more than 8 strands. As the Commission will have confirmed from its own research, all other dragline ropes have 8 or less strands. Such ropes form the “prior art” (i.e. the existing information) from which our clients’ nine strand rope was conceived. It is well-established Australian patent law that *“where the prior art, or the common general knowledge, teaches away from the claimed solution, the claims will have an inventive step”*.⁵

6 Nine strand wire ropes cost a lot more to make

BBRG asserts that our clients have sought to “over-state the value of the costs associated with the production of nine strand wire rope”. What does “overstate the value of costs” even mean? It is just a rejection for rejection’s sake, for which BBRG gives no basis. We have provided the Commission with the cost evidence to support our clients’ position.

The cost to produce nine strand wire rope is significantly greater than the cost to produce 6 and 8 strand wire ropes, end of story.⁶

The question whether nine strand wire rope constitutes a slight modification of lesser stranded ropes must be answered objectively. An answer which disregards or opposes evidence, and which discards the views of wire rope experts, necessarily fails to be objective.

Our clients have not and will not distort or conceal the facts. The Commission has the full support of our clients to pursue a thorough investigation and analysis of wire rope technology, construction, cost and performance, and to arrive at conclusions which are supported by the evidence.

BBRG’s repeated attempts to cloud the present matter with falsehoods and to push the Commission towards its own point of view by way of the rejection of evidence is telling.

Yours sincerely



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⁵ Australian Patent Office’s Manual of Practice and Procedure, 2.5.3.9.1.

⁶ EPR 024, pages 38 to 40.