IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1) **REPORTABLE: YES / NO**
(2) **OF INTEREST TO OTHER JUDGES: YES / NO**
(3) **REVISED**

2015.12.11
DATE

SIGNATURE

CASE NUMBER: 10382/2001

DATE: ~~10~~ December 2015

11/12/2015

ORICA MINING SERVICES SOUTH AFRICA (PTY) LTD Plaintiff

V

ELBROC MINING PRODUCTS (PTY) LTD Defendant

JUDGMENT

MABUSE J:

[1] This is an action by the Plaintiff against the Defendant for an interdict and for an order to deliver up.

[2] The Plaintiff is a company duly registered as such in terms of the company statutes of this country. Its principal place of business is located at corner of Anvil and

Brewery Roads, Isando, Gauteng Province. The Plaintiff is a South African company that conducts business as a supplier of materials and equipment to the mining industry.

[3] The Defendant is described as a company duly registered in terms of the company laws of this country and having its principal place of business at 19 Brewery Road, Isando, Gauteng Province. The defendant too is a South African Company involved in the manufacture and supply of equipment for use in the mining industry in the manufacture and supply of roof bolt rigs.

[4] The Plaintiff is the owner of the South African patent no. 2001/10382 entitled "Portable Drilling Apparatus" ("the patent") which has at all material times been of force and effect. The Plaintiff has attached to its particulars of claim the complete patent specification as granted and subsequently amended as annexure 'A'.

[5] The Plaintiff contends that from an unknown date to the present, the Defendant had infringed, and has continued to infringe the said patent. The said contention is based on the offering for sale, in the alternative, the sale of roof bolter rigs by the Defendants to the mining industry in this country, particularly to Glenco Extractor at Kroondal Chrome Mine in Rustenburg on or about 2013. It is the Plaintiff's case that the roof bolter rig falls within the scope of claims 1, 8, 9, 12, 16, 17 and 18 of the patent.

[6] The Plaintiff consequently seeks:

6.1 an interdict in terms whereof the Defendant is restrained from infringing the Plaintiff's afore mentioned patent, especially claims, 1, 8, 9, 12, 16 and 18 of the patent;

6.2 an order in which the Defendant is directed to deliver up for destruction all of its roof bolter rigs currently in its possession or under its control and which infringe the plaintiff's patent; and

6.3 an enquiry into damages with the directions as to the further conduct of such claims and costs.

[7] The Defendant is resists the Plaintiff's action and has for that purpose delivered a plea and counter claim. The parties have agreed to the separation of issues and to postpone the Defendant's counter claim sine die without costs.

[8] At the outset, the Court was informed that the issues on infringement were, pursuant to a Rule 37(4) pre-trial conference and request for admissions and particulars resolved and narrowed and leaving only one issue to be determined by the Court. In essence the Court is called upon to interpret a single word in the patent specification. It is required of this Court to determine the meaning to be accorded to the word "*between*" as it appears in the phrase *"A pair of spaced apart ... telescopic props with a carriage between them"* used in the claims in the patent.

[9] At the hearing of this matter the Plaintiff's case was conducted on the basis that the word "*between*" in the aforementioned phrase does not require the carriage of the drill rig of the invention to be "*between*" the two telescopic props in the sense of the ordinary dictionary meaning of the word. According to the Plaintiff, the word must be

interpreted in such a way that the carriage does not have to be located on a straight line between the two props in order to be *"between"*. The carriage is, according to the Plaintiff's definition, still "*between*" the two props even when it lies at a right angle to a midpoint on the co-linear line between the props so that its position in relation to the two props creates a form of a triangle than a straight line. This is the approach of the Defendant who contends that the carriage is not between the two telescopic props unless, if one draws a straight line between the two points, the whole carriage or part of it is located on the straight line drawn between the two props save for any slightest deviation or within normal engineering tolerances for a product of this kind.

[10] Each of the parties called an expert witness. The Plaintiffs called Dr. Burger, who testified that the Defendant's carriage is not located on the notional straight line drawn between the two telescopic props, but about 150 mm to 200 mm forward in a line between the props. It is on the basis of the location of the carriage, as set out in the evidence of Dr. Burger and also on its own invention that the Defendant contends that its drill carriage is not between the two telescopic props and that therefore they have not infringed the Plaintiff's patent. The Defendant, on the other hand, called one Mr. Fourie who, according to Mr. Michau accepted that the Defendant's drill rig takes every advantage of the patent and falls completely within the scope of its patent claim 1, save only for this factor.

[11] Notwithstanding the evidence of the experts both counsel have warned the Court against the relying on the evidence in order to determine the meaning of the word *"between"*. This is so because the word does not carry any engineering or

mechanical or scientific meaning. The word carries its ordinary meaning but in this case it is for the Court, considering the description of the location of the carriage of the Defendant's invention, whether the said carriage can be said to be within the ordinary meaning of the word *"between"* the two props.

[12] In the particulars of claim the Plaintiff has set out the following details:

Summary of the invention

12.1 In accordance with this invention, there is provided a portable self-supporting drill rig comprising a pair of spaced apart telescopic props with a carriage between them, the carriage movable along an axis substantially parallel to those of the props and supporting the drill mounted on the carriage.

12.2 Further features of this invention provide for the drill to be pivotally mounted on the carriage; for the carriage to be supported by the props; for the carriage to be movable along the props; for the props to be fluid operated and to be secured to a base plate and braced apart at their ends opposite the base plate which brace permits the drill moving into and out of alignment between the props.

12.3 Still further features of this invention provide for the carriage to be mounted as a pair of fluid-operated cylinders on the outset of the props and to have a pair of connecting members spaced apart along their length, the lower member providing the pivot mounting for the drill and the upper member providing a securable means for fixing the drill in alignment with the props and for the drill to be interchangeable with roof bolting equipment. Alternatively, for the carriage to be slidably mounted on the outside of the props and movable by an extendable piston.

Still further features of this invention provide for a fluid flow conduit to extend through the base into each probe.

[13] The designs attached to the Plaintiff's papers are described as follows:

An embodiment of this invention will be described by way of reference to the drawings in which:

figure 1 is a front elevation of the portable drilling apparatus;

figure 2 is a part sectional slide elevation of the drilling apparatus in figure 1;

figure 3 is a part sectional slide elevation of the drilling apparatus in figure 1 with the drill pivoted away from the support wings;

figure 4 is a plan view of the drilling apparatus in figure 1; and

figure 5 is the detail of the props.

(copies of the drawings are attached to this judgment)

[14] The Plaintiff has given a detailed description of the drawings and the following is such description of the drawings:

A portable drilling apparatus (1) is shown in figures 1 to 4 and includes extendable props (2) with a drill (3) secured thereto. Each prop has a pair of cylinders (5) joined at either end (6), (7) by a brace (8) and a base (9) respectively with a hydraulically operated piston (10) slidably secured within each cylinder to extend to the end thereof. The free end (11) of each piston forms a point at a conical stud (12) extends centrally from the outer surface (13) of the base. The drill is pneumatically operated and is secured through a hinge (20) to a carriage (21) at its operatively lower end (22). The carriage is secured to a pair of hydraulic cylinders (23) which are slidable over the respective cylinders of the props. Hydraulic control means

which are not shown on the diagrams allow the cylinders (23) to be moved along the length of the cylinders (5). A lock assembly (25) intermediate to lower end and the upper end (27) of the drill secures the drill between the cylinders to a cross member to selectively prevent pivoting of the drill about the hinge (20).

[15] A drill steel is removably securable in the upper end of the drill in conventional fashion. The brace is outwardly curved to permit the drill steel to extend parallel and aligned with the cylinders and to be pivotable away from the cylinders with the drill. The brace also permits the drill to extend between the ends of the cylinders.

[16] A boxlike frame which has not been shown on the diagrams made of steel tubing is secured to the brace and base to allow the apparatus to be easily moved. It also assists in preventing damage to the apparatus. Controls which have not been shown on the diagram for the drill, the props and the cylinders are carried at the end of hoses (35), only one is shown in the diagram rather than on the apparatus itself.

[17] In use, the apparatus is positioned between, in this embodiment, a footwall (40) and a hanging wall (41) with the base engaging the footwall. The props are then operated to extend the pistons until they firmly engage the hanging wall. Sufficient pressure will be applied by the props to not only prevent dislodgement of the apparatus but also to support the surfaces apart. About 20 tons of pressure will normally be sufficient for this purpose. The stud and pointed ends of the pistons assist in providing the apparatus with a firm grip between the footwall and the hanging wall.

[18] Once the apparatus are securely positioned between the surfaces the carriage is moved to be adjacent to the brace, the lock assembly released and the drill pivoted away from the props. The drill steel is then secured in the upper end of the drill and the drill pivoted back towards the props and locked in position using the lock assembly. It will be appreciated that the ability of the drill to pivot away from the props allows a longer drill steel to be secured thereto in confined areas than would be the case if the drill could not pivot.

[19] With the drill locked to the carriage the drill is operated to commence drilling of the hanging wall. At the same time the cylinders are operated to bias the carriage whilst the brace end. The bias assists in efficient penetration of the hanging wall by the drill steel.

[20] In this embodiment, the drill has a stroke of approximately 400mm and a drill steel of 1m. At the end of a stroke the drill steel can be removed from the hole (45) by moving the drill towards the base and replaced with a longer drill steel. The longer drill steel would first be inserted into the hole and then be secured to the drill by moving the drill into an engagement with it. In the alternative the drill steel can be held in position, preferably by a tool which has not been shown on the diagram movably secured to the brace, and the drill withdrawn, a further drill steel secured in the drill and a further drill steel then coupled to the drill steel. Where such coupling requires relative rotation of the two drill steels the tool holding the drill steel in a position in the hole can also act as a spanner to prevent rotation thereof.

[21] When the hole is of desired length the drill steel can be removed from the hole and replaced with a roof bolt, which cannot be shown on the diagram, which can then be fastened in position using suitable roof bolting equipment mounted in place of the drill.

[22] The drilling apparatus provides a number of advantages over existing rigs. Firstly, the apparatus of the invention supports the surface being drilled during both drilling and bolting, thus greatly enhancing the safety of persons adjacent to it. Secondly, as the apparatus of the invention supports itself between surfaces it is unnecessary for an operator to be in the immediate vicinity. Operation of the drill can thus take place at a safe distance. Thirdly, the apparatus of the invention can be left unattended during drilling allowing the operator to perform other tasks, such as positioning and preparing further drill rigs. Labour can thus be more efficiently used. It has furthermore been found that the hydraulic bias applied to the drill in the direction of drilling provides more efficient drilling than manually operated drilling.

[23] The compact size of the drilling apparatus also shows it to be effectively used for drilling the walls of gulleys or similarly confined spaces. According to the plaintiff the defendant does not dispute this.

[24] It will be appreciated, however, that many other embodiment of the portable drilling apparatus exist which fall within the scope of the invention especially as regards to configuration thereof. For example, the props can have any convenient number of extendable elements and these need not be hydraulically operated. The extendable elements could thus be operated using a manual turnbuckle. Also, any suitable

means can be used to provide relative movement of the drill on the props and the drill can be of any suitable type. Still further, the drill need not be pivotable on the carriage.

[25] One modification which is particularly convenient to use as illustrated in figure 5. In this embodiment the props are hydraulically operated and the piston (50) is hollow axially within the position is a conduit (51) which extends approximately at the height of the cylinder (52) of the prop. This construction avoids the necessity for hydraulic pipes to extend externally up the height of the collapsed props in order to enable the props to be retracted. All power and exhaust hoses can be led to or from the base of the props where they can be easily handled as necessary.

[26] A further modification has the drill carriage mounted on the base plate through an extendable piston. This enables the drill to be moved along an axis substantially parallel to those of the props without mounting the carriage directly onto to the props. However, to provide rigidity and stability it would be preferable to have the carriage slidably secured to the props. Simple wear bushes made of suitable material as "Vesconite" could be used. This embodiment has the advantage that a greater drill steel can be obtained than with the previously described embodiment and the carriage can be made shorter. Also, the outer surface of the props need not be finished to the same degree as is required to operate a hydraulic cylinder. According to the Plaintiff, the drill need not be located linearly between the pair of props but it must be generally between them. This would more likely be the case where additional props are used.

[27] It is contended by the Plaintiff that the following claims have been infringed:

27.1 a portable self-supporting drill rig comprising a pair of spaced apart telescopic props with a carriage between them, the carriage movable along an axis substantially parallel to those of the props and supporting a drill mounted on the carriage;

27.2 a drill rig as claimed in any one of the preceding claims in which the props are fluid-operated;

27.3 a drill rig as claimed in any of the preceding claims in which the props are secured to a base plate and braced apart at their opposite ends;

27.4 a drill rig as claimed in any of the preceding claims in which the props are provided with a rock engaging formations at their ends;

27.5 a portable self-supporting drill rig comprising a pair of spaced apart fluid-operated telescopic props with a carriage between them, the carriage movable along an axis substantially parallel to those of the props and supporting a drill mounted on the carriage, with the props each secured to a base and braced apart;

27.6 a portable self-supporting drill rig comprising a pair of spaced apart fluid-operated telescopic props with a carriage between them, the carriage movable along an axis substantially parallel to those of the props and supporting a drill mounted on the carriage, with the props each secured to a base and braced apart and the carriage movable by an extendable piston mounted on the base; and,

27.7 a portable self-supporting drill rig comprising a pair of spaced apart fluid-operated telescopic props with a carriage between them, the carriage movable along an axis substantially parallel to those of the props and supporting a drill

mounted on the carriage, with the props each including a cylinder with one end secured to a base, the cylinders each having a fluid operated piston slidably secured therein to extend from the other end thereof, and the cylinders braced apart.

[28] In its plea the Defendant denied that:

28.1 the roof bolter rigs fall within the scope of claims 1, 8, 9, 12, 16, 17 and 18 of the patent; and furthermore

28.2 that it has infringed, and was infringing, the patent either as alleged or at all.

Mr. Fourie testified that, and this was also contained in his report prepared for this matter, that he has compared the features of the Defendant's rig with the integers of the claims of the patent. His findings with regard to the point in issue in this matter was that the Defendant's apparatus did not include integers (d), that means that it did not have the carriage between the two spaced apart telescopic props. His understanding of the meaning of the word *"between"* as used in the specifications implied that when the drill rig was viewed in the direction of parallel axis of the props, the carriage is generally on line with the extends from the axis of one prop to the axis of the other prop. Of course the Court has been warned to steer clear from the meaning of the word *"between"* as defined by the experts.

[29] The Court was handed colour copies of the Defendant's drilling rig. The carriage of the said equipment was clearly depicted on the diagram. They were all marked annexure 'DB'. Diagram 'A' showed the Defendant's rig's side view. For purposes of description, the side view showed the following integers of the rig:

29.1 collaring mechanism;

29.2 carriage supporting structures;

29.3 the carriage, I have to point out that from this diagram 'A', there is some interval between the carriage and the telescopic probe. One can see both of them at the same time;

29.4 carriage supporting structure. There are two of them, one on either side of the carriage;

29.5 base at the foot on which the carriage, supporting structures, the drill thrust cylinder, the centre lines of the guide and the telescopic props are mounted;

29.6 the central lines of the guide and prop;

29.7 telescopic props; and

29.8 drill thrust cylinder.

Diagram 'B' shows the top view of the Defendant's apparatus; Diagram 'C' shows the right front view of the same apparatus; Diagram 'D' shows the carriage side of the Defendant's apparatus; Diagram 'F' shows the Defendant's apparatus drill carriage in a swing open position; Diagram 'E' shows the carriage *in situ* with a locking pin and the hinge where it swings to open and to close; and Diagram 'G' shows the rear view of the Defendant's rig (some are attached to the judgment for record purposes).

[30] With regards to the Defendant's product, both experts, in other words Dr. Burger and Mr. Fourie, are ad idem that Diagram 'B', the Defendant's drill rig has the following feartures:

30.1 a pair of spaced apart, vertical telescopic props which are elongate structures with axis that are opposed to, but parallel to each other;

30.2 a pair of vertical spaced apart, elongate guides –

30.2.1 with axis that are opposed to, but parallel to each other;

30.2.2 with axis that are opposed to, but parallel to the axis of the telescopic props; and

30.2.3 anchored to the latter by lengths of flat metal braces.

30.3 a vertical, elongate thrust cylinder located between the guides, mounted on a base plate and at a right ankle to the middle lines across the telescopic props;

30.4 a drill carriage support structure with two horizontally opposing arms slidably mounted on the outer side of each of the guides; and

30.5 a drill carriage mounted on the outer side of the carriage or structure.

It was important, in my view, to describe the product so that, as Mr. Bester put it in his heads of argument the so-called *"person of ordinary skill" in the art to which the patent relates"* would understand what the invention is and how it operates. At any rate determining whether there is infringement turns on the comparison between the two articles or persons involved in the alleged infringement and the words of the claims of the patent, see in this regard **Letrasat Ltd v Helios Ltd 1972(3) SA 245 (A)**.

[31] On the basis of the features of the Defendant's drill rig as set out above, it was submitted by Mr. Bester that it is clear that the Defendant's drill rig does not have *"a carriage between a pair of spaced apart telescopic props"*, in other words that it does not have a carriage across the space separating the pair of props with a prop on each side of the carriage. He contended that infringement of patented product is not determined by what the alleged infringing drill could do or would look like with such modifications but by the current configurations of the drill.

[32] There was another point that Mr. Bester raised. This point related to the operation, and not the physical features of the Defendant's drill rig. I am not certain if the operation of a drill rig has anything to do with the location of the carriage. Be that as it may this point was that in the operation of the Defendant's drill rig, the carriage which is slidably mounted on the outside of the opposed vertically extending guides, is guided for movement by two guides and not, by two pair of spaced apart telescopic props as it is in the case with the drill rig of the invention. He argued furthermore that by reason of the fact that the carriage is mounted across the telescopic props, the invention clearly anticipates that the carriage of the invention would be guided for movement by the props. By referring to the manner in which the Defendant's drill rig operates, Mr. Bester merely wanted to demonstrate that the Defendant's products and the invention operate in fundamentally different styles and that, therefore, the Defendant's drill does not infringe any claim in the patent. I have to point out though, that it was not the Plaintiff's case that the infringement of its right in the patent was constituted, among others, by the manner of operation of the Defendant's drill rig.

[33] A patent specification is divided into two parts; firstly, the description or the body of the specification which serves the purpose of purchasing the monopoly claimed in the specification. Somewhere supra, I described extensively the bodies of both the invention and the Defendant's drill rig. Secondly, the claims in the patent which served to define and to set the limits to the monopoly that the patent is intended to serve.

[34] In order to determine the monopoly that the patent is intended to secure and protect, the Court must begin with a consideration of the claims for the simple reason that the forbidden field must be found in the language of the claims and not somewhere else. The claims of the patent define the scope of the patent and the monopoly which it enjoys. Consequently, in order to ascertain the nature, scope and limits of the invention, one must construe the claims in the context of the remainder of the specifications. In **Power Steel Construction Ltd v African Batignolles Construction (Pty) Ltd 1955 (4) 215 (A) at p. 224D-E** Van den Heever JA, as he then was cited with approval the following passage from **Electrical & Musical Industries v Lissen, 56 R.P.C. 23, 39,** by Lord Russel of KIllowen:

"The function of the claims is to define clearly and with precision the monopoly claimed, so that others may know the exact boundaries of the area within which they will be trespassers. Their primary object is to limit and not to extend the monopoly. What is not claimed is disclaimed. The claims must undoubtedly be read as part of the entire document, and not as a separate document; but the forbidden field must be found in the language of the claims and not elsewhere. It is not permissible, in my opinion, by reference to some language used in the earlier part of the specification, to change a which by its own language is a claim for one subject matter into a claim for another and a different subject matter, which is what you do when you alter the boundaries of the forbidden territory. A patentee who describes and invention in the body of a specification obtains no monopoly unless it is claimed in the claims ...

A claim is a portion of the specification which fulfils a separate and distinct function. It, and it alone, defines the monopoly; and the patentee is under a statutory

obligation to state the claims clearly and distinctly what is the invention which he desires to protect."

Therefore in interpreting patent claims a Court should have recourse to the full context and background of a specification to enable it to decide what the skilled addressee would have understood the claims to be.

[35] The purpose of the interpretation of the claims in a patent is to establish what the language used by him would mean to a skilled addressee. In **Roman Roller CC and Another v Speedmark Holdings Pty Ltd 1996 (1) SA 405 (A) at 419 D** the Court had the following to say:

"....must view the patent through the eyes of the skilled addressee in the relevant art; and the Court must take into account that such addressee is expected to use a reasonable skill and intelligence in interpreting the language of the patent. He is not required to struggle unduly with it, but he must make the best of it and not adopt an attitude of studied obtuseness. If words or expressions in a claim are affected or defined by what is said in the body of a specification, the language of the claims must be construed accordingly. Moreover, uncertainty or ambiguity in a claim may be resolved by what appears in the body of the specification, which may be thus resorted to not only when the language in question has been expressly defined in the body of a specification, but also, in the absence of such definition, where there is material in the body from which the intention of a draftsman can be gathered. Where the words permit it, an interpretation should be adopted which is consistent with the description of the program to be overcome and the method of doing so described in the body of the specification. Another source of elucidation of apparently unclear language may be prior art itself."

Technical words used in a claim must be given the meaning as those words would ordinarily be understood by such skilled addressee. In **Gentiruco AG v Firestone SA Pty Ltd 1972(1) SA 589(A) at 613-4 and 616 E to 618 A** the Court stated as follows in respect of question of admissibility of expert evidence to construe the specification:

"... the question that arises whether the evidence of a skilled, expert witness opinion as to the meaning of any part of the specification, including the claims, is admissible ... The area of the territory in which in cases of this kind an expert witness may legitimately move is not doubtful. He is entitled to give evidence as to the state of the art at any given time. He is entitled to explain the meaning of any technical terms used in the art. He is entitled to say whether in his opinion that which is described in a specification on a given hypothesis as to its meaning is capable of being carried into effect by a skilled worker. He is entitled to say what at a given time to him as skilled in the art a given piece of apparatus or a given sentence or any given hypothesis as to its meaning would have taught or suggested to him. He is entitled to say whether in his opinion a particular operation in connection with the art could be carried out and generally to give any explanation required as to the facts of a scientific kind. He is not entitled to say nor is counsel entitled to ask him what the specification means, nor does the question become anymore admissible if it takes the form of asking him what it means to him as an engineer or a chemist ... Consequently, the evidence of experts' opinions in the present case as to the meaning of the specification was inadmissible and must be disregarded."

[36] According to **Monsanto Co v MDB Animal Health Pty Ltd (formerly MD Biologies CC) 2001(2) SA 887 (SCA)** patent claims are interpreted in a way similar to the

interpretation of contracts. This is what the Court had to say in the said matter at paragraph 8:

"The rules relating to the interpretation of patents have often been stated and do not need any reformulation ... For present purposes the following rules as they appear in Gentiruco AG v Firestone SA Pty Ltd 1972(1) SA 589(A) at 614A - 616D may be emphasized:

(a) a specification should be construed like any other document, subject to the interpreter being mindful of the objects of a specification and its several parts;

(b) the rule of interpretation is to ascertain, not what the invention or the patentee may have had in mind, but what the language used in the specification means, i.e. what the intention was as conveyed by the specification, properly construed;

(c) to ascertain that meaning, the word used must be read grammatically and in their ordinary sense;

(d) technical words of the art or science involved in the invention must also be given their ordinary meaning: i.e. as they are ordinarily understood in the particular art or science;

(e) if it appears that a word or expression is used, not in its ordinary sense, but with some special connotation, it must be given that meaning since the specification may occasionally define a particular word or expression with the intention that it should bear that meaning in its body or claims, thereby providing its own dictionary for its interpretation;

(f) if a word or expression is susceptible of some flexibility in its ordinary connotation, it should be interpreted so as to confirm with and not to be inconsistent with or repugnant to the rest of the specification; and

(g) if it appears from reading the specification as a whole that certain words or expressions in the claims are affected or defined by what is said in the body of the specification, the language of the claims must then be construed accordingly."

In the said authority of Monsanto the Court cited with approval the following passage from **Fundstrust Pty Ltd (in Liquidation) v Van Deventer 1997(1) SA 710(A) at 726 H - 727B**:

"Recourse to authoritative dictionary is of course a permissible and often helpful method available to the Courts to ascertain the ordinary meaning of words ... As a rule every word or expression must be given its ordinary meaning and in this regard lexical research is useful and at times indispensible. Occasionally, however, it is not."

[37] Something similar was expressed in the context of the interpretation of the patent specification by full court (per Nicholas J) in **De Beers Industrial Diamond Division Pty Ltd v Ishizuka 1980(2) SA 191 (T) at 196 E-F**:

"A dictionary meaning of a word cannot govern the interpretation. It can only offer a guide. And, where a word has more than one meaning, the dictionary does not, indeed it cannot, prescribe priorities of the meaning. The question is what is the meaning applicable in the context of the particular document under consideration."

Accordingly, the words used by the patentee in the claims are of supreme importance not only for the purposes of interpreting the claims but also for the purposes of the determination of the alleged infringement for in order there to be an infringement the alleged infringed article must incorporate each and every feature of the invention claimed in the claims on which the plaintiff relies.

[38] I have set out the issues that this Court is required to decide, the meaning of the word *"between"* as used in the following phase *"a pair of spaced apart ... telescopic props with a carriage between them."* The Plaintiff never contended that the word *"between"* is unclear and unambiguous. I pointed out earlier that the word *"between"* does not have any special meaning, i.e. it does not have any mechanical meaning nor does it have any engineering or scientific meaning. Accordingly this word should be accorded its ordinary meaning unless the word *"between"* has more than one meaning, in which case as stated in the above authority the dictionary cannot prescribe the priorities of the meaning.

[39] The ordinary dictionary meaning of the word *"between"* is:

"At or into or across the space separating two objects, places or points."

"*a point 'B' is said to lie between points A and C where A, B and C are distinct collinear lie*". According to Mr. Bester, the Defendant's case is that the word *"between"*, as used in the Plaintiff's claims is as clear as crystal and unambiguous and that having regard to the ordinary and dictionary meaning of the word *supra*, the carriage must lie between the two props. It does not necessarily have to be on a straight linear arrangement, but nevertheless across the space separating the pair of props and with a probe on each side of the carriage. This means that on each side of the carriage there has to be probe in order for the carriage to be *"between"*. According to the Defendant, the carriage can only be *"between"* if it is located or if it lies in the space that separates the two telescopic props. Once its location is at angle with the two props it is not located in the space separating the two props and it therefore is not "between" the two props.

[40] On the other hand the Plaintiff gives the word an extended meaning. The Plaintiff contends that the word *"between"* does not require that the carriage should be between the props as defined in the dictionary. The Plaintiff seeks to extend the meaning of the word *"between"* to include a carriage which is offset at a right angle to the collinear line between the pair of telescopic props at an undefined and unspecified distance from the space between the two props.

[41] Mr. Michau was, in his heads of argument, critical of Mr. Fourie's understanding of the word *"between"*. He stated that it suffered from the same error of a language Mr. Bester made in contending that the word *"among"* namely that it assumes that *"between"* can only be expressed with reference to two objects. He argued that this was not what the dictionary required. No matter what Mr. Michau argues, it would appear that it is exactly how the dictionary defines the word. It must be defined in relation to two objects. For instance the Shorter Oxford Dictionary defines the word as:

"4. In the interval separating (two points of time, events, etc); intermediate to (two quantities etc); particularly of the nature of (two qualities);

5. in or through the space or line or a centre separating (two points, two objects)"

It is, in my view, crucial to point out the dictionary underscores meaning the definition of the word "between" with reference to two objects or events or time or line.

[42] In order to be between the two props, the carriage must occupy the space between them. It may be in the middle of the two props at an equidistance or are maybe

closer to either of the two props but of supreme importance is that it can only be *"between"* the two props if it occupies any point in the space that separates the two props. I do not agree with the proposition by the Plaintiff that includes a configuration in which the props and the carriage are separated in a triangular configuration. This will be unattainable. The limits of the patent will not be clear to the public. They will not know how to avoid infringing the patent. Here one recalls the words of Court in **Electrical & Musical Industries v Lissen at paragraph 34** *supra.*

[43] In the result I find that the Defendant's carriage is not between the two telescopic props and that the Plaintiff's patent has therefore not been infringed. Accordingly I make the following order:

1. The Plaintiff's action is dismissed.
2. The Plaintiff is hereby ordered to pay the Defendant's costs of this action.

P.M. MABUSE
JUDGE OF THE HIGH COURT

Appearances:

Counsel for the Plaintiff:	*Adv. R Michau (SC)*
	Adv. Eyels
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	c/o Van Stade vd Ende Inc
Counsel for the Defendant:	*Adv. AJ Bester (SC)*
Instructed by:	*McCallum Rademeyer & Freimond*
	c/o Jacobson & Levy Inc
Date Heard:	*23-27 November 2015*
Date of Judgment:	*11 December 2015*

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AUTOROCK DRILLS (PTY) LIMITED

2 Sheets
Sheet No. 1

COMPLETE

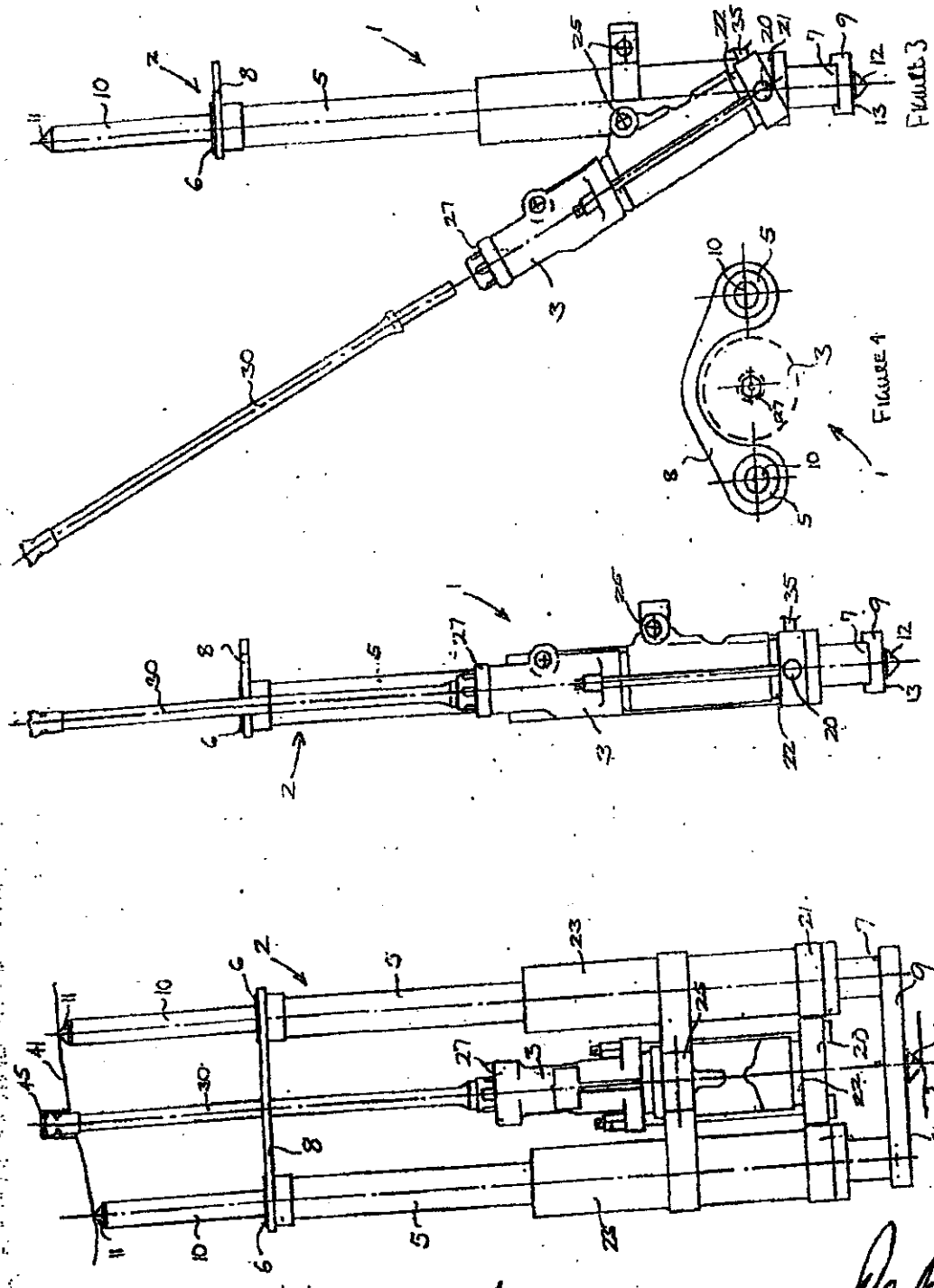

FIGURE 3

FIGURE 4

FIGURE 2

FIGURE 1

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FOR THE APPLICANT

"ANNEXURE DB"

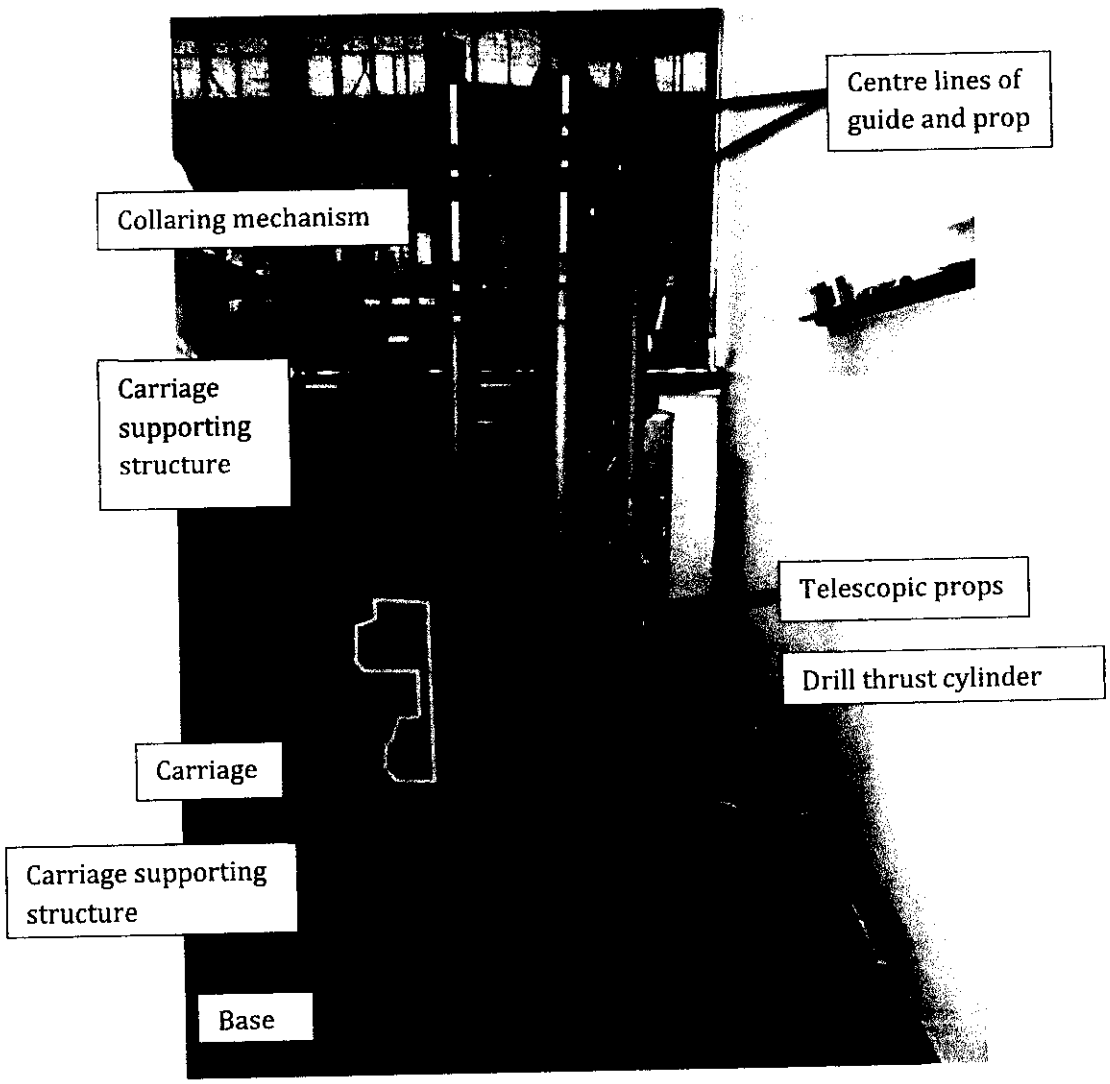

Diagram A: Elbroc rig side view

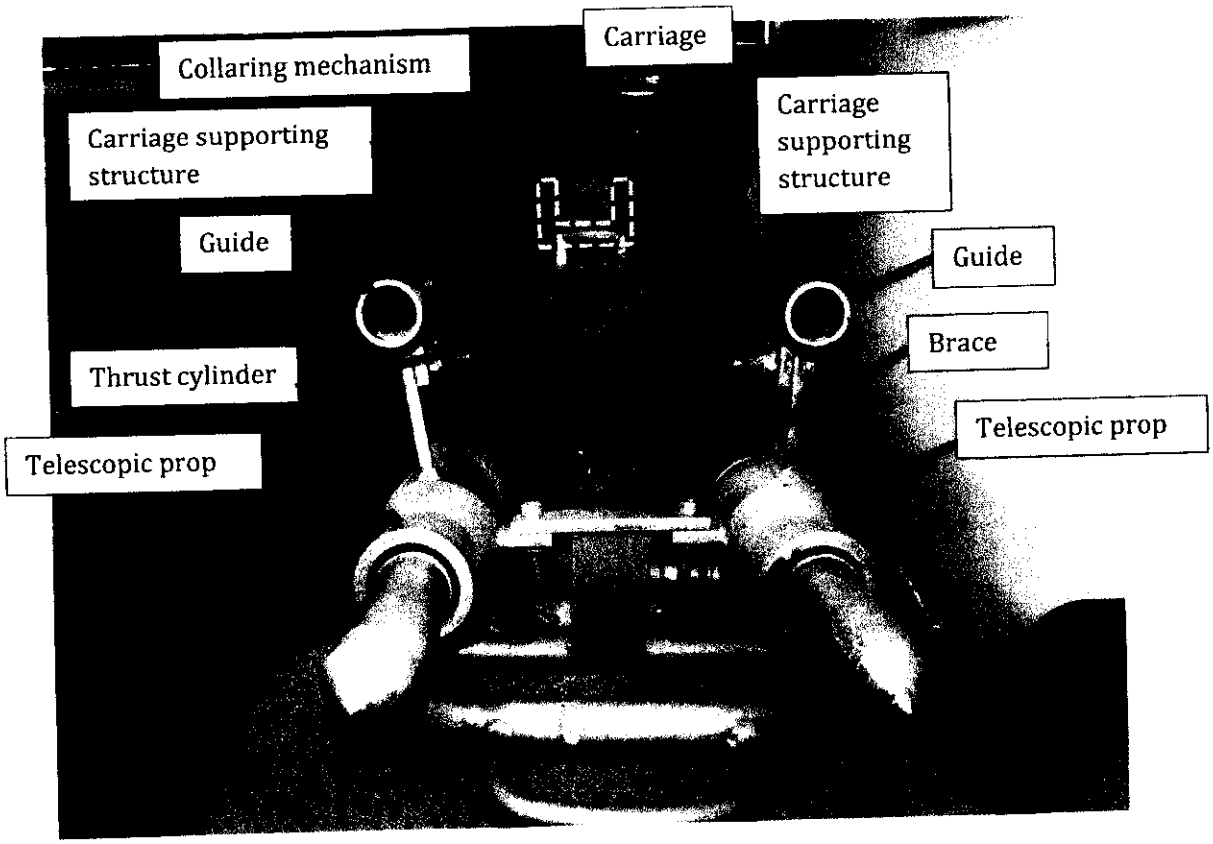

Diagram B: Elbroc rig top view

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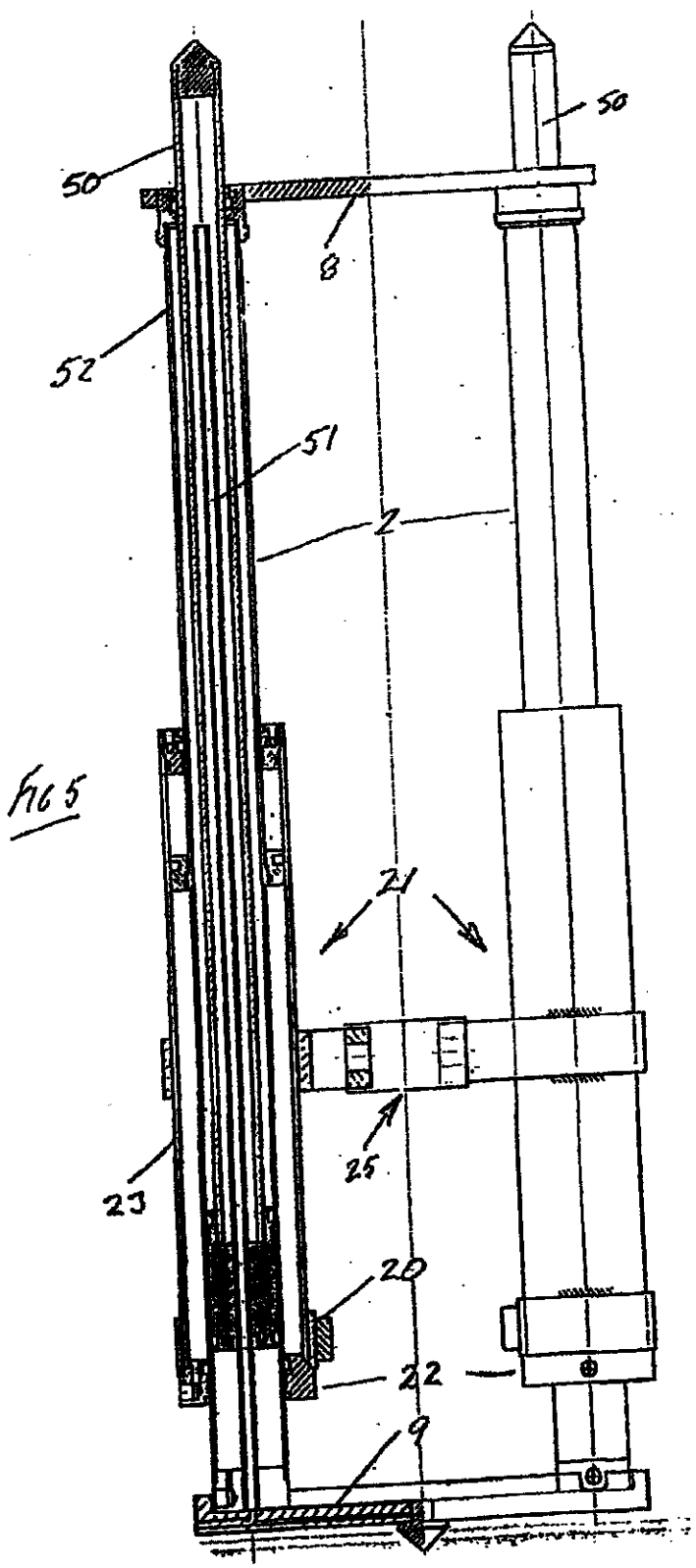

Fig 5

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"ANNEXURE DB"

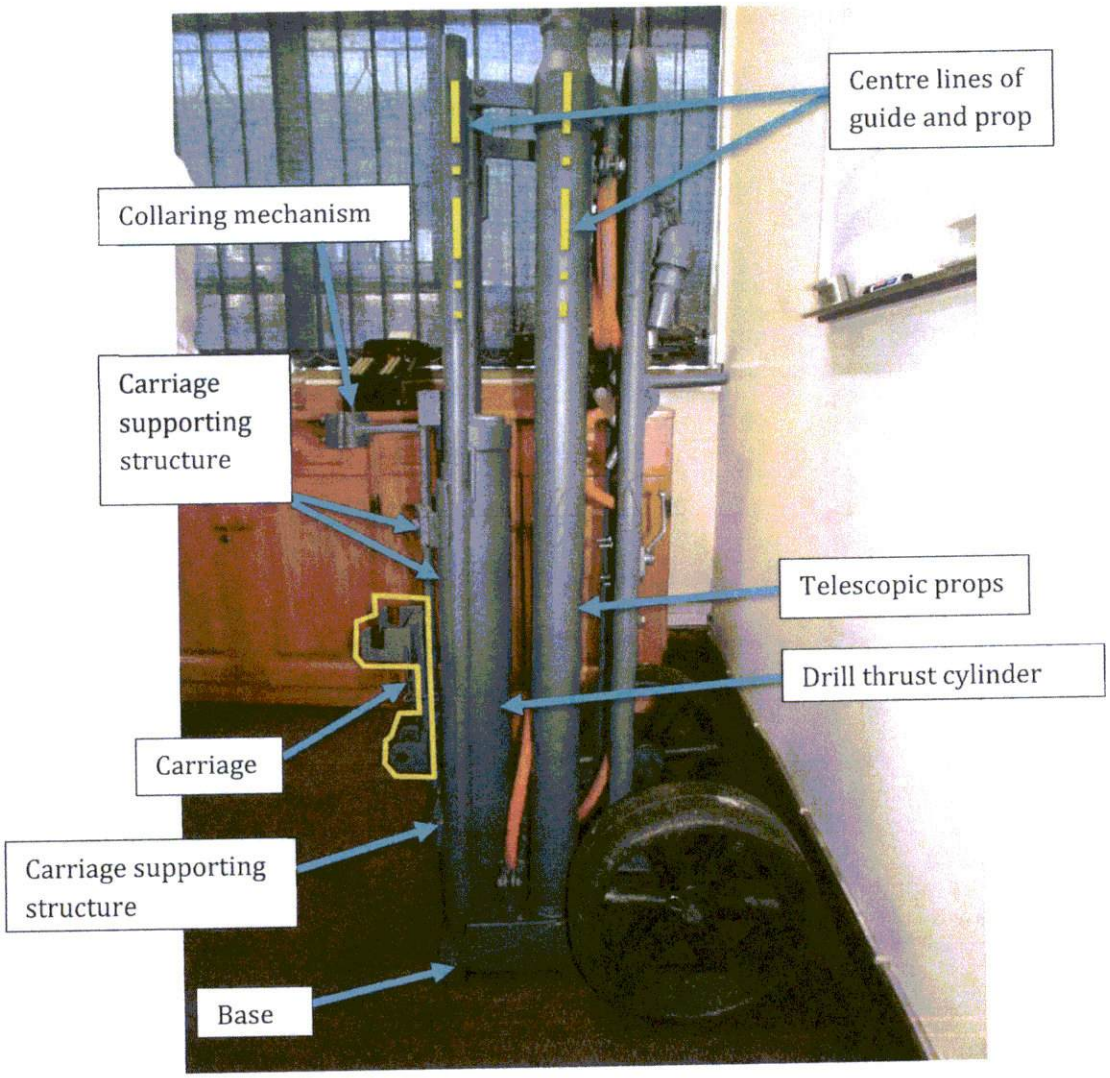

Diagram A: Elbroc rig side view

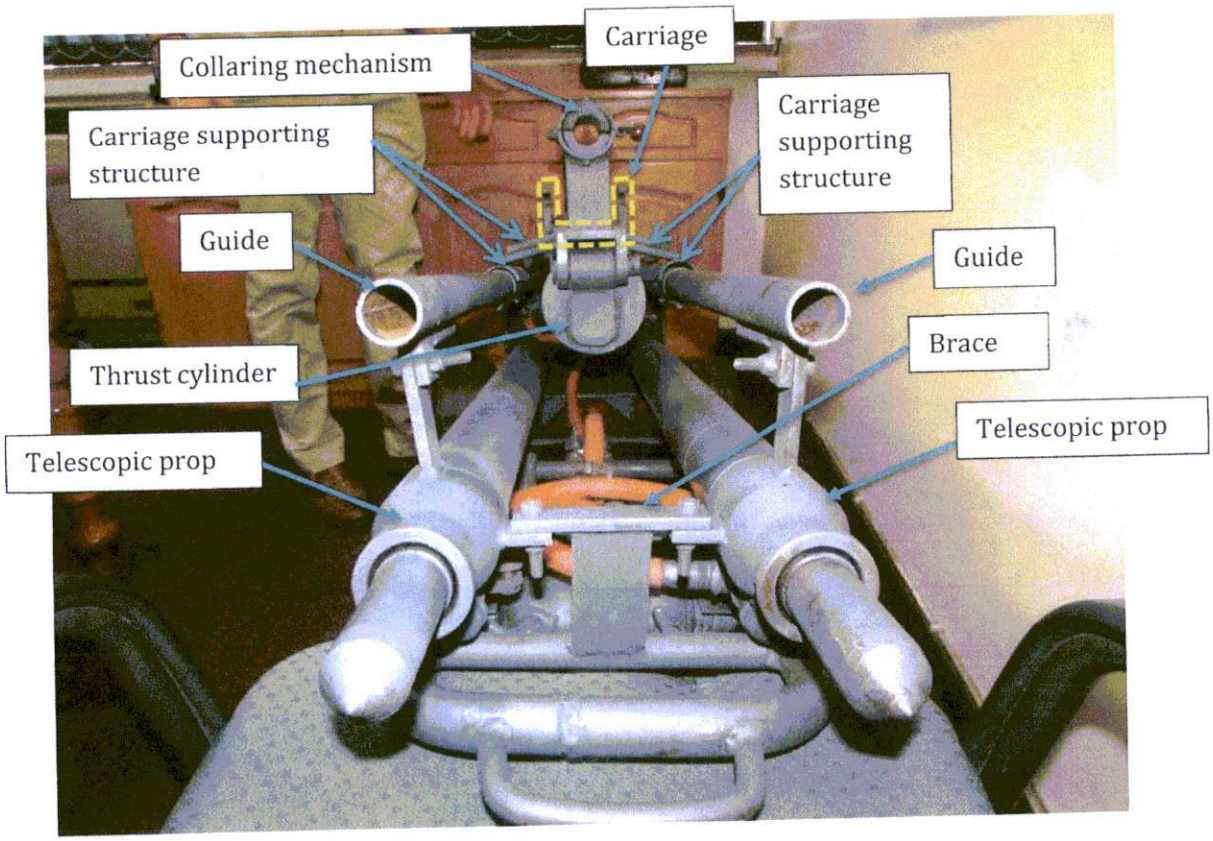

Diagram B: Elbroc rig top view