



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
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STATUS Immediate

Please note that the media summary is for the benefit of the media and does not form part of the judgment.

***Camworth Technologies Ltd v Videx Wire Products (Pty) Ltd
(702/12) [2013] ZASCA 112 (17 September 2013)***

Media Statement

The Supreme Court of Appeal (SCA) handed down judgment today in an appeal from the Court of the Commissioner of Patents, Johannesburg. In this matter, the respondent had sought a declaration in the court below, in terms of s 69(1) of the Patents Act 57 of 1978, that a pre-stressing device ("the Videx pot") that it intended to manufacture and dispose of in the Republic of South Africa did not infringe the claims of a patent of which the appellant was patentee ("the patent").

The court below, per Louw J, held that the Videx pot did not infringe the patent as it did not include two of the integers thereof. The Commissioner accordingly issued a declaration of non-infringement. Camworth Technologies, the patentee, now appeals that finding and declaration with leave of the court below.

The issue before the SCA was whether the Videx pot falls within the ambit of any of the claims of the appellant's patent and therefore infringes it. The SCA noted that this question is to be determined by means of a comparison between the Videx pot and the wording of the claims in the appellant's patent, which is to be construed purposively so as to extract from it the essence of the invention.

In undertaking such a comparison with reference to the expert evidence tendered on behalf of each party (despite neither expert being called to offer oral testimony in the court below), the SCA upheld the conclusion of the Commissioner. Its finding was based primarily on the fact that two essential integers in the patent were absent in the Videx pot. Thus according to the SCA, while both devices might seek to achieve the same result, the inflating mechanism of the Videx pot is designed to

straighten upon inflation, while that of the patent serves to shallow the socket. Accordingly, the Videx pot cannot be said to infringe the appellant's patent.

For this reason, the appeal was dismissed with costs and the declaration of non-infringement by the court below endorsed.

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