



SUPREME COURT OF APPEAL OF SOUTH AFRICA

Sandvik Intellectual Property AB v Outokompu OYJ & another

879/18

Date of hearing: 30 August 2019
Date of judgment: 18 September 2019

MEDIA SUMMARY

The following explanatory note is intended to assist media in the reporting of this case and is not binding on either the Supreme Court of Appeal or any member of the Court.

Today the Supreme Court of Appeal (SCA) handed down judgment upholding an appeal against an order of the Court of the Commissioner of Patents, Pretoria (Makgoka J sitting alone). The appellant was Sandvik Intellectual Property AB (Sandvik), a Swedish Corporation with headquarters in Sandviken, Sweden. The appeal was directed against the refusal by the court below of Sandvik's application for the revocation of South African Patent 2002/5826 (the patent). The patentee is Outokompu OYJ (OT), a company incorporated in Finland.

The patent involves a belt 'for the thermal treatment of a continuously operated material bed'. It is used in the sintering process. Sintering is a process in terms of which metal powders having, different melting-points, are mixed and then heating the mixture to a temperature approximately the lowest m.p. of any metal included. Sandvik challenged OT's patent on the basis that the patent claims were not clear, or not being fairly based on the matter disclosed in the application, and the invention not involving an inventive step. In this regard it relied on the provisions of s 61 of the Patents Act 57 of 1978 (the Act). The court of first instance held that Sandvik had failed to prove that the patent was invalid on any of these grounds and dismissed the application.

The challenge on appeal was restricted to the third ground, namely, whether the invention involved an inventive step. This is essentially a question of obviousness: Does the step said to be inventive go beyond the state of the art at the relevant time and, if so, would this step be obvious to a person skilled in the art? OT contended that the inventive step involved the specific range of elements on the conveyor belt, made up of perforated areas alternated with non-perforated areas, the perforated areas constituting between 20-60% to establish a 'sweet spot'

for optimal thermal treatment. The SCA considered the prior art and found only the range of 20-60% to be distinguishable. However, due to the obviousness of this step to the skilled person, it was not sufficient to make the invention patentable and the court of first instance ought thus to have granted Sandvik's application for revocation. The appeal was upheld with costs.
