



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
MEDIA SUMMARY

From: The Registrar, Supreme Court of Appeal

Date: 4 September 2026

Status: Immediate

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Kido Staalwerke CC v Safety Engineering International LLC and Another (265/2024) [2026] ZASCA 114 (4 September 2026)

Today, the Supreme Court of Appeal (SCA) dismissed, with costs, an appeal by Kido Staalwerke CC (Kido Staalwerke) against a judgment of the Court of the Commissioner of Patents, Pretoria (the high court).

The appeal concerned whether Kido Staalwerke's Roll Over Protection System (ROPS), marketed under the trademark FALOSA, infringed the patent owned by Safety Engineering International LLC (Safety Engineering). The patent, titled Vehicle Rollover Protection Roof Geometry and Structure, relates to a vehicle rollover protection device designed to reduce the crushing forces experienced during a rollover accident and thereby protect vehicle occupants. Safety Engineering, together with its South African licensee, Aeroklas Duys (Pty) Ltd, instituted patent infringement proceedings against Kido Staalwerke and TY2ONE (Pty) Ltd. The high court upheld the infringement action with costs. Kido Staalwerke appealed to the SCA with the leave of this Court.

Before the SCA, the central issue was whether Kido Staalwerke had infringed Safety Engineering's patent, particularly independent claims 1, 7 and 14. These claims concern the geometry of the rollover protection system, the method used to increase rollover crush resistance and the rollover protection structure itself. The SCA restated the principles applicable to patent infringement. It held that patent claims must be construed purposively and contextually to identify the essential elements or substance of the invention. An unduly literal interpretation must be avoided where it would overlook the essence or 'pith and marrow' of

the patented invention. Once the claims have been properly construed, the allegedly infringing article or process must be compared with them to determine whether it falls within their scope.

The Court further held that, although dictionary meanings may assist in interpreting words used in a patent, they cannot displace the meaning that emerges from reading the patent specification as a whole and in its proper context. The infringement enquiry accordingly involves two stages: first, construing the relevant patent claims and the terms used in them; and second, considering the allegedly infringing article and the method employed by the alleged infringer.

The SCA considered the expert evidence of Professor Ezekiel Grzebieta, an engineer with extensive experience in vehicle rollover and one of the inventors of the patent. Kido Staalwerke did not call any witnesses or an expert witness to rebut his evidence. The Court held that an expert may assist a court to understand specialised concepts and the significance of technical teachings in a patent, although the interpretation of the patent ultimately remains the function of the court. In relation to claim 1, the Court rejected Kido Staalwerke's contention that the rollover protection system had to be mounted to the existing roof of the vehicle. It held that the 'roof line contact surface' is the part of the upper surface of the vehicle that engages the ground during a rollover and, where a ROPS is retrofitted, that surface may be constituted by the hoop or arcuate member of the ROPS.

Regarding claim 7, the Court rejected the contention that 'minimises' meant that far-side aggressivity had to be reduced to zero. The patent itself contemplated differences between the major radius and hoop radius. Accordingly, 'minimises' meant that the aggressivity was significantly reduced, rather than eliminated altogether.

As to claim 14, the Court rejected Kido Staalwerke's argument that its FALOSA ROPS extended 'over', rather than 'from', the vehicle's nominally flat roofline because it was not physically attached to the roof. The Court held that this distinction placed undue emphasis on the language of the claim instead of considering the claims as a whole and in context. The Court also considered material relating to Kido Staalwerke's testing and presentation of the FALOSA ROPS to Anglo-American. That material illustrated a system designed to maintain a minimum change in the vehicle's centre of gravity throughout the phases of a rollover. In the absence of evidence to the contrary, this supported Safety Engineering's case concerning the methodology employed by Kido Staalwerke.

The SCA concluded that, viewed according to its overall function, the FALOSA ROPS sought to achieve what Safety Engineering's patented invention achieved and did so in substantially the same way. The FALOSA ROPS had therefore taken the substance of the patented invention. Safety Engineering had discharged the onus of establishing infringement of claims 1, 7 and 14, and the high court had correctly upheld the infringement action.

The appeal was accordingly dismissed with costs.

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