



THE 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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The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Groundprobe Pty Ltd and Another v Reutech Mining (Pty) Ltd and Others (Case no 1226/2019)
[2021] ZASCA 22 (19 March 2021)

The Supreme Court of Appeal (SCA) today dismissed an appeal brought by Groundprobe Pty Ltd and another appellant against Reutech Mining (Pty) Ltd and two other respondents. The appeal was dismissed with costs, including those of two counsel. The SCA thereby upheld the decision of the Court of the Commissioner of Patents.

The question before the SCA was whether claims 1 and 27 of the patent in suit were invalid for lack of inventive step. The issue turned on whether it was inventive to mount a known radar system used to monitor slope system stability in open cast mines on a motorised automobile vehicle. This, in circumstances where the same radar system was previously mounted on a trailer that was hitched to a motorised automobile vehicle.

The matter commenced in the Court of the Commissioner of Patents as a patent infringement action instituted by Groundprobe Pty Ltd and the second appellant against Reutech Mining (Pty) Ltd and the two other respondents. The first appellant, Groundprobe Pty Ltd, an Australian company, was the proprietor of South African patent 2012/08400 (the patent) entitled 'Work Area Monitor'. The second appellant, Groundprobe South Africa (Pty) Ltd, was a licensee under the patent. The three respondents were related companies. The appellants alleged that the respondents had infringed the patent by making, using, offering for sale and selling work area monitors known as the MSR 060V and MSR 120V systems, both of which were mine slope monitoring systems comprising a radar and an interferometric processor mounted on the back of a bakkie. As a result of the admissions by the third respondent, however, there was never any dispute between the parties on the question of the infringement. Instead, the respondents counterclaimed for revocation of the patent on several grounds; on appeal the respondents restricted themselves to only one ground for revocation, namely lack of inventive step. The issue was thus whether the invention, to the extent that it differed from the state of the art, had inventive merit. This was a factual question.

The SCA held that the inventive step must lay in the idea of mounting a radar used for monitoring slopes on a motorised automobile vehicle. The SCA held further that that could not be said to constitute a step forward upon the state of the art and least of all a step that was inventive. This, because there were various examples in the record of radar mounted on the back of vehicles in other applications, such as in the military.

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