



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

DATE 31 March 2017

STATUS Immediate

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

Neutral Citation: *Orica Mining Services v Elbroc Mining Products* (233/2016)
[2017] ZASCA 48 (31 March 2017)

MEDIA STATEMENT

Today the Supreme Court of Appeal handed down a judgment overturning an order of the Court of the Commissioner of Patents, dismissing an application by Orica Mining Services (Pty) Ltd for an interdict against Elbroc Mining Products (Pty) Ltd. Orica had approached the Court of the Commissioner alleging that a roof bolster rig that Elbroc was selling infringed its patent no 2001/10382 granted in respect of Orica's Roof Bolster rig. Elbroc denied the allegation contending that, unlike the Orica rig the drill carriage in its rig was not located 'between' the two telescopic props that supported the carriage. It was not in dispute that unlike in the Orica rig, the drill carriage in the Elbroc rig was located off a notional linear line drawn between the two props.

The Commissioner held that the carriage in the Elbroc rig was not located between the two props and therefore there was no infringement of the patent. The court found that 'between' meant 'linearly between' and that the meaning contended for by Orica constituted an extension of the ordinary meaning of the word as provided in the patent

On appeal, the SCA held that claims derive their colour from the context set in the body of the specification. The Court found that the interpretation given by the Commissioner to the word 'between' was unjustified in the context of the specification as well as the claim and that on a purposive approach the 'linearly between' was not essential for functioning of the invention. The appeal succeeded.

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