



THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

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

Nu-World Industries (Pty) Ltd

v

Strix Ltd

Today the Supreme Court of Appeal upheld an appeal from the Court of the Commissioner of Patents, Pretoria. Strix Ltd (Strix) had sued Nu-World Industries (Pty) Ltd (Nu-World), alleging that Nu-World had infringed claim 1 of patent 95/4779 (the patent) registered in favour of Strix under the Patents Act. Claim 1 related to controls used in kettles which would cut the power supply to the element if the kettle boils dry or is switched on when empty. It was alleged that Nu-World was using controls in its kettles which infringed the patent.

At the initial hearing, the parties separated the issues in the suit, initially proceeding only to determine if four named controls of Nu-World infringed and, accordingly whether an interdict should be granted to prevent future infringement. The question of damages or royalties arising from any infringement was held over (the damages part of the action). Preller J determined that the patent had not been infringed and dismissed the claim. On appeal, however, this court held that three of the named controls (the infringing controls) had infringed while the fourth did not. It accordingly

interdicted Nu-World from using the three infringing controls and added to the interdict the words, not requested by Strix, 'or any other thermally sensitive overheat controls as claimed in claim 1 of the patent' (the additional words).

Strix thereafter claimed to have discovered infringements by controls other than the three infringing controls and that certain modified controls of Nu-World infringed the patent. On the basis that the order of this court included the additional words, Strix sought to amend its declaration to include, in the damages part of the action, an enquiry into whether the additional controls infringed the patent and damages which accrued from any such infringement along with the claim for damages arising from the three infringing controls. Nu-World objected to the amendment which prompted an application to amend by Strix. The opposition was to the effect that the court order did not allow for further infringements to be determined during the damages part of the action. Matojane J, sitting in the Court of the Commissioner of Patents, allowed the amendment but granted Nu-World leave to appeal his order doing so.

This court held that the inclusion in the order of this court of the additional words was limited to the interdictory relief. This was forward looking and was geared to prevent future infringements. As such, it was appropriate to interdict any infringement of the patent in order to protect Strix from any future infringement. The order referring the damages part of the action did not include the additional words. It referred an enquiry into damages arising from the found infringements, ie the three infringing controls. Because the issues in the action had been separated, the judgment on the infringement part was final and determinative of the controls for which Strix could claim damages. It was accordingly impermissible to have a further enquiry into infringements during the damages part of the action.