PROTECTING INNOVATION: A LANDMARK PATENT CASE IN SOUTH AFRICA

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The recent Supreme Court of Appeal ("**SCA**") judgment in *Kido Staalwerke CC v Safety Engineering International LLC and Another* [2026] ZASCA 114 is an important reminder that businesses cannot copy another company's patented invention simply by making small changes to it. Although the case involved highly technical vehicle safety technology, the Court's message was straightforward: if a company appropriate s the core idea of a patented invention, it can still be guilty of patent infringement, even if the product looks slightly different.

What was the dispute about?

Safety Engineering International, a US-based company, owned a South African patent for a special vehicle rollover protection system. The invention was designed to reduce serious injuries and deaths when vehicles roll over. The patented technology works by changing the shape and structure of a vehicle's roof area so that the vehicle rolls more smoothly during an accident, reducing the crushing force on passengers.

Kido Staalwerke, a South African company, manufactured a rollover protection product called the **FALOSA ROPS**. Safety Engineering argued that this product copied the essential features of its patented invention. The Court was therefore asked to decide whether the FALOSA system unlawfully infringed Safety Engineering's patent rights.

The Supreme Court of Appeal agreed with Safety Engineering and dismissed Kido Staalwerke's appeal. The Court found that the FALOSA rollover protection system performed substantially the same function and operated in essentially the same way as the patented invention. As a result, it infringed the patent.

The Court emphasised that patent cases should not be decided by focusing only on individual words or minor differences between products. Instead, courts must look at the substance of the invention. In simple terms, if someone takes the "heart" or "core idea" of an invention, they cannot avoid liability by making small cosmetic changes. The Court relied on the long-standing principle that patent law protects the "pith and marrow" of an invention, meaning its true essence.

A key reason why Safety Engineering succeeded was because it presented strong expert evidence. The company called Professor Grzebieta, an expert in vehicle rollover safety, who explained how the patent worked and why the FALOSA system fell within its scope. Importantly, Kido Staalwerke did not call its own expert witness to challenge that evidence. The Court therefore accepted much of the expert testimony presented by Safety Engineering.

Thus, the judgment also highlights the risk of failing to call important witnesses. Kido Staalwerke had indicated that it would rely on certain experts and technical witnesses but ultimately did not call them to testify. The Court drew an adverse inference from this failure. In other words, it assumed that those witnesses might not have supported Kido Staalwerke's case. This serves as an important lesson in litigation: if a party has evidence that could help its case, it should present it.

The *Kido Staalwerke* judgment sends a powerful message to innovators and businesses alike. South African courts will protect genuine inventions and will not allow competitors to escape liability through clever wording or minor design changes. The decision reinforces confidence in South Africa's intellectual property system by ensuring that inventors who invest time, money and expertise into developing new technologies receive the legal protection they deserve.