

Fed. Circ. Says PTAB Wrongly Rejected Lock Patent App

By **Matthew Bultman**

Law360 (December 12, 2018, 8:31 PM EST) -- The Federal Circuit on Wednesday threw out a Patent Trial and Appeal Board decision that rejected an application for a patent on luggage locks that airport security workers can open, finding the board overlooked a key part of the application.

The court was ruling on an appeal filed by David Tropp, the CEO of a company called Safe Skies LLC, after the PTAB affirmed a patent examiner's decision to reject several claims in his application because they lacked an adequate written description.

The Federal Circuit said the PTAB did not consider the entire specification — the part of the application that described the invention — in its analysis. The court sent the case back to the PTAB, instructing the board to reconsider its decision “in light of the entire [patent] specification.”

“This is an example of where the Federal Circuit has recognized the PTAB simply got the issue wrong and therefore vacated and remanded for that reason,” Paul Hughes of Mayer Brown LLP, an attorney for Tropp, said.

The U.S. Patent and Trademark Office does not comment on pending litigation.

Tropp's patent application covers a type of dual-access luggage lock that can be opened with a combination by the owner, or with a master key by Transportation Security Administration workers who need to screen bags.

The claims in the patent application describe a “set of locks.” The PTAB in its decision held there was not adequate written description because the specification did not describe a set of locks with various subsets.

Vacating that decision, the Federal Circuit highlighted language in the specification that refers to a “special lock” that was meant to include various types of locks, including those with different sizes, manufacturing designs and styles.

The PTAB's only discussion of this language was in a footnote, a passage the Federal Circuit said was “at best confusing.”

“The board's failure to consider this language was erroneous,” the court wrote.

This wasn't Tropp's first trip to the Federal Circuit.

Last year, the appeals court revived an infringement lawsuit that Tropp and Safe Skies filed over related patents against Samsonite and other makers of locks and luggage. Legal experts have said that ruling could make it easier to show that multiple parties jointly infringed a patent.

Chief Judge Sharon Post, Senior Circuit Judge Raymond Clevenger and Circuit Judge Kimberly Moore sat on the Federal Circuit panel.

Tropp is represented by Paul Hughes and Jonathan Weinberg of Mayer Brown LLP.

The USPTO is represented by Meredith Schoenfeld, Thomas W. Krause, Mai-Trang Duc Dang and Coke Morgan Stewart of the Office of the Solicitor.

The case is In re: David Tropp, case number 2017-2503, in the U.S. Court of Appeals for the Federal Circuit.

--Editing by Aaron Pelc.