

Schindler Unit's Elevator Patent Scrapped By Fed. Circ.

By **Bill Donahue**

Law360, New York (November 27, 2012, 3:55 PM ET) -- The Federal Circuit on Tuesday overturned a jury's verdict that Otis Elevator Co. had infringed a patent for elevator control systems owned by Schindler Elevator Corp. unit Inventio AG, declaring the design obvious and invalid.

Inventio's patent covered the use of radio frequency identification technology to quickly assign elevators to take passengers to specific floor destinations. But the company's system is just an obvious combination of preexisting technologies, the appeals court said.

A July 2011 jury verdict that found Inventio's system to be novel and that Otis had unlawfully copied it "lacks substantial evidentiary support," the panel said.

"Rather than a product of innovation, the [Inventio] patent becomes an application of ordinary skill and common sense that was obvious to try and had a reasonable expectation of success," the appeals court wrote. "A reasonable juror could not conclude otherwise."

The Federal Circuit reversed a New York judge's entry of the verdict and remanded the case back for a ruling consistent with the obviousness determination. The decision will lift a permanent sales ban on Otis' Compass with Seamless Entry, the product found to have infringed Inventio's patent.

Representatives for the parties were not immediately available for comment Tuesday.

Inventio's U.S. Patent Number 5,689,094, issued in 1997, identifies elevator passengers carrying badges or electronically readable devices using radio waves, and then assigns an elevator car for each passenger's needs and takes passengers to their preprogrammed floor destinations.

Schindler and Inventio sued in July 2006, after 7 World Trade Center opened in New York with Otis' competing Compass system. Schindler and Otis are the largest elevator and escalator companies in the world.

Following a trial in July 2011, the jurors found that Otis had infringed every asserted claim of the '094 patent. U.S. District Judge Colleen McMahon subsequently denied post-trial motions and imposed a sales ban on Otis' rival system.

But on Tuesday, the Federal Circuit said each aspect of Schindler's design was predicted by prior art inventions and publications that any reasonable engineer could have combined into the '094 patent. Schindler argued on appeal that the jury was correct to find the prior art nonanalogous — that is, nonpertinent — to elevator design.

The court disagreed, however, saying the jurors' finding was legally impossible.

“Because the jury should have found the ... prior art analogous, the conclusion becomes inescapable that [the] '094 patent is a clear example of a combination of familiar elements according to known methods yielding no more than ... predictable results,” the court wrote.

Tuesday's decision won't affect any damages, because the lower court only awarded Schindler injunctive relief. Schindler had also filed appeals seeking a stronger injunction, but the court declared the issue moot.

Inventio is represented by Joseph Re, Jon Gurka, Joseph Cianfrani, Cheryl Burgess and Reza Mirzaie of Knobbe Martens Olson & Bear LLP.

Otis is represented by Andrew Baak, Mark Levine, Stephen Cowen and Katherine Minarik of Bartlit Beck Herman Palenchar & Scott LLP.

The case is Inventio AG v. Otis Elevator Co., case number 11-1615 and 12-1108, in the U.S. Court of Appeals for the Federal Circuit.

--Additional reporting by Erin Coe and Richard Vanderford. Editing by Elizabeth Bowen.

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