

PEDAL PATENT DISPUTE MAY REACH HIGH COURT

Key question: What is the threshold for innovation?

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Two automotive pedal manufacturers are locked in a high-stakes Supreme Court battle that could redefine a key issue of U.S. patent law: How innovative does a device or idea have to be to deserve a patent?

The case pits DriveSol Worldwide Inc. of Troy, Mich., against KSR International Co., of Ridgetown, Ontario.

The lawsuit was initiated by Teleflex Inc. of Limerick, Pa., which sold its pedal division to DriveSol in August. DriveSol supplies Ford Motor. Co. and other automakers; KSR's customers include General Motors.

The case

Teleflex accused KSR of infringing on its patented adjustable pedal assembly. Teleflex requested an injunction against further infringement and more than \$1 million in lost profits, DriveSol lawyer Steven Susser, of Southfield, Mich., told *Automotive News*.

KSR denied any infringement.

A federal judge in Detroit dismissed the suit, agreeing with KSR that the key claim in the Teleflex patent was invalid because it was an obvious extension of prior patented designs. The claim involves a design in which a vehicle's electronic throttle control is attached to the bracket that mounts the gas pedal to the car.

KSR lawyer John Dabney of New York said in an interview: "Teleflex had this patent which basically claimed the combination of a pre-existing position-adjustable accelerator pedal and a pre-existing pedal position sensor. It literally was nothing more than that -- somebody else's pedal and somebody else's sensor together."

But the U.S. Court of Appeals for the Federal Circuit in Washington reinstated the suit. The court found that the lower court applied the wrong test for determining obviousness: whether a person of ordinary skill in the art would apply prior designs in the particular manner claimed in Teleflex's patent.

The court said a jury trial is necessary to resolve factual issues. The specialized court, which was created in 1982 to handle most patent appeals, took no position on the merits of the infringement allegation.

Now KSR wants the Supreme Court to take the case, and the Supreme Court is awaiting a Justice Department solicitor general's recommendation on whether to accept the case for review.

Parties' positions

DriveSol's court papers describe the case as a "simple infringement dispute," while KSR argues that the appeals court's interpretation of the law is out of synch with previous Supreme Court rulings.

Both sides agree on the importance of the underlying issue of what can be patented.

"How big does an innovation have to be before it merits a patent?" Dabney said. "That's probably the single most important issue in patent law."

Susser calls the issue "a critical public policy issue," but insists that it doesn't belong in the Supreme Court. Instead, he said, any change in patentability standards should be left to Congress or "the internal working of the Patent and Trademark Office."

"I don't think the standard is broken now," **Susser** said. "I think it's being applied properly. KSR just didn't like the result."

And if KSR wins in the Supreme Court, he said, "It will be more difficult for the small inventor, not the Microsofts or Hewlett-Packards of the world."

Microsoft Corp. is among five major companies filing a friend-of-the-court brief supporting KSR.

Dabney predicted that even if the Supreme Court refuses to hear the case, KSR will win at trial because "We have a very strong noninfringement case." But, he said, it would be better for the Supreme Court to answer the legal question.

"We're hopeful the great cloud and great cost of doing business will be lifted from the backs of manufacturers and users of complex technologies in the United States," Dabney said.

The Supreme Court has no deadline for deciding whether it will take the case.

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