

Intellectual Property Update



Virgin Atlantic succeeds in flat-bed seat infringement appeal

The Court of Appeal has upheld an appeal concerning a patent of Virgin Atlantic's seating system for flat-bed seats. The Court held that the patent was valid and infringed by a company that had been manufacturing aircraft seating which reclined to a flat position. The decision overruled the High Court's decision that the patent was valid but limited to flip-over seating only meaning that, on the High Court's analysis, the patent had not actually been infringed.

The Claim

Virgin Atlantic ("Virgin") began developing its flat-bed seat in 2000, in response to British Airways' popular versions, and appointed Premium Aircraft Interiors ("Premium") to design and manufacture the new seat. Virgin's Upper Class Suite or "UCS" was novel because instead of achieving the flat-bed position by reclining the seat, this position was achieved by flipping over the back of the seat. The UCS, protected by UK patent number EP 1,495,908 (the "Patent") was rolled out in November 2003.

In January 2004, Premium was asked to design a new business class seat for Cathay Pacific. Premium approached design house Acumen, requiring them to design something which could compete with the flat-bed seat used by Virgin and British Airways. Acumen's design was ultimately used by Premium on flat-bed seating produced for Air Canada, after Cathay Pacific did not pursue its project.

Virgin claimed that the flat-bed seating produced by Premium infringed the Patent. Premium argued that they had not infringed the Patent as the patent claims restricted protection to flip-over seats only, and not to reclining seats which achieved the same flat seating position (the seats produced for Air Canada were reclining seats). Premium also claimed that the Patent was not valid in any event. The High Court ruled that the Patent was valid but not infringed, however the Court of Appeal overturned this decision, ruling that the Patent was infringed because:

- the Patent clearly identified a solution to the problem of lost space which had posed a problem to all upper class flat-bed airline seats, regardless of whether they achieved their position by reclining or flipping over;
- a "skilled reader" of the Patent would have no reason to suppose that the patent was limited only to flip over seats. The inclusion of the flip-over concept was used to illustrate the patent and not to describe its scope; and
- reference numerals used within a patent claim should not be used to interpret a patent claim or to limit its scope; instead their purpose is to explain the patent claim.

Comment

The decision hints at a softening of the Court of Appeal's reputed stance in respect of those claiming infringement of patents. Possibly the most important aspect of their decision is the Court's approach in assessing the scope of a patent by looking at what a skilled reader would expect a patentee to understand about patent law and the complex rules of patent drafting.

See: Virgin Atlantic Airways Limited v Premium Aircraft Interiors UK Limited [2009] EWCA Civ 1062, 22 October 2009)

If you would like any further information on the content of this update, or other information on how to protect your intellectual property rights please do not hesitate to contact one of the intellectual property team.

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Matthew Talbot specialises in Intellectual Property litigation including disputes involving infringement of trade marks, copyright, design rights, patents and domain names. He has made numerous UK and European trade mark applications on



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