

## TSA Loses Patent Suit Over Airport Security Trays

By Ryan Davis

*Law360, New York (October 31, 2016, 3:48 PM EDT)* -- A U.S. Court of Federal Claims judge ruled against the Transportation Security Administration Friday in a patent infringement suit by SecurityPoint Holdings Inc. over trays used at airport security, finding that the agency failed to prove that the patent is obvious.

The government agency stipulated that it infringed the patent, which SecurityPoint alleges is used at over 400 airports nationwide, but argued that it was invalid as obvious. In a decision issued following a trial held last year, Senior Judge Eric G. Bruggink disagreed.

He noted that none of the government's experts testified that it would be obvious to combine prior art references to arrive at the claimed invention, a system of using carts to move trays that have passed through a screening checkpoint back to the beginning so they can be used again.

The TSA argued only that the "ordinary creativity" of a skilled artisan would suggest combining prior art to come up with that system, but the judge ruled that argument "is a bridge too far."

"In the absence of direct testimony from one skilled in the art as to the obviousness of each step of [the patent claim], finding it obvious would require an impermissible exercise of hindsight," he concluded.

The judge noted that "on its face, the patent is simple and employs common implements," but that patents are presumed valid and court must guard against using hindsight. He ordered the parties to file a brief scheduling further proceedings.

The inventor of SecurityPoint's patent testified that after Sept. 11, 2001, airport security began having to screen more and more items from passengers and the number of trays needed to pass those items through security created clutter and inefficiency.

The judge said that prior to the invention, security employees manually carried the trays from the end of the security checkpoint back to the beginning. The patented invention involves a rolling cart placed at the end of the security checkpoint where the trays can be stacked and rolled back to the beginning, with advertisements printed on the trays.

The TSA argued that the invention was obvious in view of earlier patents covering a system for running trays through security screen and a system for filling and handling trays. Since carts are not novel in industrial engineering, the patent should be found obvious, the government said.

The judge disagreed, writing that "the trays and carts method of the ... patent, while simple and employing common implements, was not disclosed by any single reference offered at trial nor did any witness opine that a combination of those references would have been obvious."

The judge cited other factors he said show that the patent is not obvious, including internal TSA documents showing that the invention led to an 80 percent increase in efficiency, and the fact that the TSA adopted SecurityPoint's system nationwide.

Bradley Graveline of Sheppard Mullin LLP, an attorney for SecurityPoint, said Monday that the company was pleased with the decision on the patent, which he described as "the heart and soul of SecurityPoint's business."

"The decision is significant and was achieved after years of hard fought litigation that concluded in an eight-day bench trial before Judge Bruggink," he said.

The judge's ruling comes on the heels of a recent ruling favoring SecurityPoint in a different dispute with the TSA, Graveline noted. In September, the D.C. Circuit ordered the TSA to pay the company's attorneys' fees after SecurityPoint challenged the agency's decision to change the terms of the company's relationship with airport operators.

The TSA declined to comment on the decision.

The patent-in-suit is U.S. Patent Number 6,888,460.

SecurityPoint is represented by Bradley Graveline, Manish Mehta and Laura Burson and Don Pelto of Sheppard Mullin LLP.

The government is represented by Principal Deputy Assistant Attorney General Benjamin C. Mizer, John Fargo, director of the intellectual property staff of the Justice Department's civil division commercial litigation branch and Justice Department attorney Lindsay Eastman.

The case is SecurityPoint Holdings Inc. v. U.S., case number 1:11-cv-00268, in the U.S. Court of Federal Claims.

— Editing by Ben Guilfoy.