IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2025] SGHC 243

Originating Claim No 155 of 2024

Between

Ng Say Keong (trading as
S & K Solid Wood Doors)

… *Claimant*

And

(1) Jia Le Aluminium Pte Ltd
(2) 9 Power Aluminium & Glass Pte Ltd

… *Defendants*

Counterclaim of 1st and 2nd Defendants

Between

(1) Jia Le Aluminium Pte Ltd
(2) 9 Power Aluminium & Glass Pte Ltd

… *Claimants in Counterclaim*

And

Ng Say Keong (trading as
S & K Solid Wood Doors)

… *Defendant in Counterclaim*

Version No 1: 05 Dec 2025 (13:13 hrs)

JUDGMENT

[Intellectual Property — Patents and inventions — Invalidity]
[Intellectual Property — Patents and inventions — Infringement]
[Intellectual Property — Trade marks and trade names — Passing off — Misrepresentation]

TABLE OF CONTENTS

FACTS **1**

THE PARTIES 1

BACKGROUND TO THE DISPUTE 2

THE PARTIES' CASES **4**

MR NG'S CASE 4

THE DEFENDANTS' CASE 7

ISSUES TO BE DETERMINED **9**

PRELIMINARY ISSUE: CONSTRUCTION OF THE SK PATENT SPECIFICATION **9**

ISSUE 1: WHETHER THE SK PATENT IS VALID **14**

APPLICABLE LAW 14

Novelty requirement *14*

Inventive step requirement *16*

APPLYING THE LAW TO THE FACTS 18

Claim 1 ..... *19*

Claims 2, 3, 4 and 5 ..... *20*

ISSUE 2: WHETHER THE DEFENDANTS COMMITTED INFRINGEMENT OF THE SK PATENT **22**

APPLICABLE LAW 22

MR AWYONG'S OPINION 23

THE PARTIES' CASES 24

APPLYING THE LAW TO THE FACTS 29

Version No 1: 05 Dec 2025 (13:13 hrs)

ISSUE 3: WHETHER THE DEFENDANTS ARE LIABLE FOR THE TORT OF PASSING OFF 31

APPLICABLE LAW 31

GOODWILL 32

MISREPRESENTATION 33

Distinctiveness *34*

Confusion inquiry *36*

DAMAGE 50

CONCLUSION AND RELIEFS 53

Version No 1: 05 Dec 2025 (13:13 hrs)

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Ng Say Keong (trading as S & K Solid Wood Doors)
v
Jia Le Aluminium Pte Ltd and another

[2025] SGHC 243

General Division of the High Court — Originating Claim No 155 of 2024
Dedar Singh Gill J
13–15, 20 May, 8 July 2025

5 December 2025 Judgment reserved.

Dedar Singh Gill J:

1 This claim is for patent infringement and passing off. Upon consideration of the evidence, I find that the patent is valid but not infringed. The evidence establishes that the defendants engaged in intentional acts of passing off.

2 By parties' consent, the claim in HC/OC 155/2024 proceeded on a bifurcated basis. This judgment therefore deals only with the determination of liability issues covered at the trial.

Facts

The parties

3 The claimant, Ng Say Keong ("Mr Ng"), is a sole proprietor in the business of inventing, creating, manufacturing, marketing, selling and installing

innovative and inventive doors and door-related products in Singapore. His business, S & K Solid Wood Doors, was registered in Singapore in 2006.[1]

4 The first defendant, Jia Le Aluminium Pte Ltd ("Jia Le"), is a private limited company registered in Singapore in 2017. It sells aluminium products to interior renovators and individual customers. These products include doors, window frames, grilles, and other related goods.[2] The second defendant, 9 Power Aluminium & Glass Pte Ltd ("9 Power"), is a private limited company registered in Singapore in 2018. It is also engaged in the sale of aluminium products which include doors, window frames, grilles, and other related goods.[3] Jia Le and 9 Power are collectively referred to as the "Defendants". The Defendants share the same registered office address, shareholders and directors, namely Koh Thiam Hock ("Mr Koh") and Lim Swee Kiat ("Mr Lim").[4]

Background to the dispute

5 Mr Ng is the registered proprietor of Singapore Publication No 10201401033R ("SK Patent"). It is titled "Sliding Door System and the Method of Operating the Same". He filed his patent application on 27 March 2014 and was granted the SK Patent on 29 October 2015.[5] He says that the SK Patent is and was at all material times valid, subsisting and in force in Singapore.[6] The Defendants dispute the validity of the SK Patent.[7] The invention that is the

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1 Statement of Claim filed on 11 March 2024 ("SOC") at para 1.

2 Defence and Counterclaim (Amendment No 1) filed on 6 August 2024 ("DCC") at para 2.

3 DCC at para 3.

4 SOC at para 4; DCC at para 4.

5 SOC at para 5.

6 SOC at para 6.

7 DCC at para 6.

Version No 1: 05 Dec 2025 (13:13 hrs)

subject of the SK Patent is a slide-and-swing door. It has become known to the relevant public as the "SK Door" and I will refer to it as such.[8]

6 Mr Koh and Mr Lim have been directors and shareholders of a Malaysia-registered company, Supreme Door Aluminium & Glass Sdn Bhd ("Supreme Door MY"), since February 2023. Yeo Kay Swee ("Mr Yeo") has also been a shareholder (but not director) of Supreme Door MY since February 2023.[9] Supreme Door MY was incorporated by Goh Song Guan ("Mr Goh") on 8 March 2021 and its registered address is in Johor Bahru. It is the manufacturer and exporter of a slide-and-swing door which it refers to as the "SD Door".[10]

7 Mr Goh is a former employee of S & K Solid Wood Doors. He worked as a supervisor overseeing the manufacturing of doors in S & K Solid Wood Doors from 1 December 2010 to 3 October 2016.[11] The Defendants in their Defence and Counterclaim (Amendment No 1) say that Mr Goh "had resigned on May 2021".[12] The dispute over when Mr Goh had actually ceased being Mr Ng's employee will be addressed in detail at [97]–[98] below.

8 The SD Door is manufactured according to the specification outlined in patent application no PI2022002773, titled "A Combination of Slide Swing Door" filed with the Intellectual Property Office of Malaysia. The same application was also filed at the Intellectual Property Office of Singapore ("IPOS") on 13 August 2021. The patent was granted by IPOS on 1 November

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8 Ng Say Keong's affidavit filed on 7 February 2025 at para 25.

9 Yeo Kay Swee's affidavit filed on 7 February 2025 at para 4.

10 Goh Song Guan's affidavit filed on 7 February 2025 at paras 3–5; DCC at paras 4.2–4.4 and 18.2.

11 Goh Song Guan's affidavit filed on 7 February 2025 at paras 15–16; Ng Say Keong's affidavit filed on 7 February 2025 at para 41.

12 DCC at para 19.1.

Version No 1: 05 Dec 2025 (13:13 hrs)

2024.[13] Since 2023, 9 Power has been importing SD Doors from Supreme Door MY to sell and install for its customers.[14] Jia Le does not import SD Doors but it also sells SD Doors.[15]

The parties' cases

Mr Ng's case

9 Mr Ng learnt that sometime in July 2023, a relative ("Relative") of his existing customer ("Customer") was renovating their home and they purchased slide-and-swing doors from the Defendants.[16] The Defendants' employees and/or representatives introduced themselves as employees of "SK Doors" when they attended at the Relative's home for the installation of the slide-and-swing doors. After the installation, Mr Ng inspected the doors and verified that they were not SK Doors and were not sold and/or installed by him or his employees and/or representatives.[17] Instead, they were SD Doors.[18]

10 Subsequently, Mr Ng discovered from his own records that the Defendants had purchased SK Doors from 2020 to 2023.[19] There was also no corresponding purchase of SK Doors by the Defendants for the Relative at the material time.[20]

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13 DCC at paras 4.6–4.7; Koh Thiam Hock's affidavit filed on 7 February 2025 at para 34.

14 DCC at para 4.8.

15 Official transcript (14 May 2025) at p 8, lines 2–7 and p 11, lines 11–13.

16 Particulars of Infringement dated 8 March 2024 ("POI") at para 2(b); Ng Say Keong's affidavit filed on 7 February 2025 at para 51.

17 POI at para 2(b)(i)–2(b)(ii).

18 Ng Say Keong's affidavit filed on 7 February 2025 at para 52.

19 POI at para 2(b)(iii).

20 POI at para 2(b)(iv); Ng Say Keong's affidavit filed on 7 February 2025 at para 52.

Version No 1: 05 Dec 2025 (13:13 hrs)

11 Mr Ng then hired a private investigator, Seet Ju Yong Jeremy ("Mr Seet") to look into the matter. On 1 August 2023, Mr Seet physically attended at the Defendants' registered office which was also their showroom. An employee of 9 Power, Koh Chin Keong (who identified himself as and will hereinafter be called "Joe"),[21] referred to a slide-and-swing door as an "SK Door". He offered to sell such a door to Mr Seet for $330.[22] The following day, Joe contacted Mr Seet *via* WhatsApp. He sent photographs of the slide-and-swing doors and quoted $320 per door. He also informed Mr Seet that there will be a discount "depend[ing] on the physical order volume".[23] On 22 August 2023, Joe sold a door to Mr Seet for a discounted price of $270. It was delivered on 25 August 2023. Mr Ng then verified through an inspection that the door was not an SK Door.[24]

12 Mr Ng claims that the Defendants circulated a copy of a brochure called "9. SD DOOR" in Singapore sometime in or around July 2023. They also sent a promotional flyer titled "SD Door Promotion.pdf" to customers by WhatsApp. Between 1 November 2023 and 31 January 2024, the SD Doors were offered at a promotional price of $288 for one door or $568 for two doors.[25] Mr Ng has also been approached by members of the public inquiring if the Defendants' doors were S & K Solid Wood Doors' products or if the parties were associated.[26]

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21 Koh Chin Keong's affidavit filed on 7 February 2025 at para 2.

22 Seet Ju Yong Jeremy's affidavit filed on 7 February 2025 at para 8.

23 Seet Ju Yong Jeremy's affidavit filed on 7 February 2025 at para 10 and Annex B1.

24 POI at paras 2(c)–(d); Seet Ju Yong Jeremy's affidavit filed on 7 February 2025 at paras 9–10.

25 POI at paras 2(e)–(f).

26 SOC at para 26.

Version No 1: 05 Dec 2025 (13:13 hrs)

13 It is Mr Ng's case that the Defendants have infringed the SK Patent by, *inter alia*, making and importing SD Doors.[27] He also submits that the Defendants have committed acts of passing off by misleading customers into believing that the slide-and-swing doors they sell are from or associated with S & K Solid Wood Doors.[28]

14 According to Mr Ng, S & K Solid Wood Doors is known for its slide-and-swing doors. He estimates that he has sold 350,000 slide-and-swing doors in Singapore to date.[29] He has been carrying on his business by reference to "SK", "S&K", "SK Door(s)", "S&K Doors" and "S & K Solid Wood Doors" (collectively, "SK Name"). His slide-and-swing doors are also referred to by the SK Name.[30] The letters "S" and "K" are a reference to his first name "Say Keong" and are featured in the logo that he uses for his business. He claims to have invested substantial amounts of time, money and effort in promoting and establishing his business under the SK Name in Singapore. There has been longstanding, extensive use and promotion of the same in Singapore.[31] Members of the public would have associated the SK Name with S & K Solid Wood Doors and/or its doors (especially his slide-and-swing doors).

15 In respect of the validity of the SK Patent, Mr Ng considers that his patent does not form part of the state of the art before its priority date. The Japanese Patent Publication No JP2005048539 ("Japanese Patent") (which forms the basis of the Defendants' counterclaim of patent invalidity: see [18]

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27 POI at para 1.

28 SOC at para 13.

29 SOC at paras 10–11.

30 SOC at para 12; Ng Say Keong's affidavit filed on 7 February 2025 at para 17.

31 SOC at paras 12–14.

Version No 1: 05 Dec 2025 (13:13 hrs)

below) had been previously cited by the IPOS Patent Examiner, Dr Chua Sin Siu, in his Search Report dated 4 November 2014 and Written Opinion dated 21 November 2014.[32] Only the "Abstract", "Paragraphs [0001], [0012]" and "Figures 1-11" of the Japanese Patent were deemed relevant for the purpose of Dr Chua Sin Siu's consideration as to whether Mr Ng's patent was novel and involved an inventive step.[33] Dr Chua Sin Siu initially found that the application did not meet the requirement for novelty because all the claims were "not new". In particular, Claims 1 to 4 were deemed to be "independently disclosed" in other patents including the Japanese Patent.[34] On 1 April 2015, Mr Ng provided a written response through his patent attorney, amending Claim 1 "by incorporating unique features of the proposed invention".[35] This was accepted by Dr Chua Sin Siu and Mr Ng's patent was accordingly granted on 29 October 2015. Hence, the Japanese Patent is not relevant and/or sufficient to prove that Mr Ng's patent is neither novel nor inventive.[36]

The Defendants' case

16 The Defendants dispute Mr Ng's version of events. The Defendants claim that prior to 2023, there were two commonly known slide-and-swing doors in the market – the PD Door manufactured by a company called "PD Door Pte Ltd" and the SK Door manufactured by S & K Solid Wood Doors. Before importing SD Doors from Supreme Door MY, 9 Power purchased both SK

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32 Claimant's Bundle of Documents ("CBOD") Vol VI at pp 28 and 33.

33 Defence to Counterclaim (Amendment No 1) filed on 19 August 2024 ("DTC") at pp 39–40.

34 Ng Say Keong's affidavit filed on 7 February 2025 at p 682.

35 Ng Say Keong's affidavit filed on 7 February 2025 at p 685.

36 DTC at pp 38–40.

Version No 1: 05 Dec 2025 (13:13 hrs)

Doors and PD Doors from Mr Yeo who was a trader dealing in sliding doors.[37] But it stopped purchasing and selling SK Doors sometime in January or February 2023.[38] Since then, 9 Power has been importing SD Doors from Supreme Door MY and the Defendants have been selling them in Singapore.

17 The Defendants deny that their employees had identified themselves as S & K Solid Wood Doors' employees. They explain that the slide-and-swing doors installed in the Relative's home were SD Doors.[39] As regards Mr Seet's interaction with Joe at the showroom, the Defendants maintain that the trade description used was of an SD Door and the door sold was an SD Door. There was no reference made to the SK Door in their promotional materials either.[40] Overall, they assert that the SD Doors have never been represented to members of the public as SK Doors.[41]

18 The Defendants also challenge the validity of the SK Patent on two grounds. First, they argue that the alleged invention which forms the subject of the SK Patent (*ie*, the SK Door) formed part of the state of the art before the priority date of the alleged invention. It had been made available to the public *via* the Japanese Patent published on 24 February 2005. Second, the SK Patent involves no inventive step in that it was obvious to a person skilled in the art, having regard to the matter which formed part of the state of art before the priority date of the alleged invention.[42]

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37 DCC at para 7.2(a)–(b).

38 Official transcript (15 May 2025) at p 35, lines 5–7.

39 DCC at para 7.2(c)(i) and (iv).

40 DCC at para 7.2(d), (e) and (g).

41 DCC at para 23.

42 DCC at paras 33(A)–33(B).

Version No 1: 05 Dec 2025 (13:13 hrs)

Issues to be determined

19 There are three issues to be determined in this action:

(a) whether the SK Patent is valid;

(b) if so, whether the Defendants committed infringement of the SK Patent; and

(c) whether the Defendants are liable for passing off on the basis that they committed acts that are likely to confuse customers as to the true origin of the SD Door.

Preliminary issue: Construction of the SK Patent specification

20 In respect of the issues concerning the SK Patent, the parties appointed Mr Ron Awyong ("Mr Awyong") as their joint neutral expert witness in this action.[43] Mr Awyong is a registered Singapore patent attorney with over 20 years of experience.[44] Following his appointment, he prepared his joint neutral expert witness report dated 7 February 2025 ("Expert Report").[45] The Expert Report establishes an infringement opinion (*ie*, whether the Defendants' SD Door infringes the SK Patent) and a validity opinion (specifically, whether the SK Patent is novel and inventive in light of the Japanese Patent).[46]

21 Before turning to the substantive analysis of the patent validity and infringement issues, I first interpret the claims asserted in the SK Patent. Claim construction is a crucial exercise that identifies the invention in respect of which

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43 Ron Awyong's affidavit filed on 7 February 2025 at p 1, para 1.

44 Ron Awyong's affidavit filed on 7 February 2025 at p 11.

45 Ron Awyong's affidavit filed on 7 February 2025 at p 6, para 14.

46 Ron Awyong's affidavit filed on 7 February 2025 at p 51, para 1.1.

Version No 1: 05 Dec 2025 (13:13 hrs)

the monopoly is claimed (*IIa Technologies Pte Ltd v Element Six Technologies Ltd* [2023] 1 SLR 987 ("*Element Six*") at [62]). This clarifies the scope of protection afforded by the patent.

22 The relevant legal principles concerning the inventive concept of a claim were espoused by the Court of Appeal in *Cicada Cube Pte Ltd v National University Hospital (Singapore) Pte Ltd* [2018] 2 SLR 940 at [63]–[64]:

> 63 The inventive concept is commonly described as *"the heart" of the invention*: *Markem Corp v Zipher Ltd* [2005] EWCA Civ 267 ("*Markem*") at [102]; William Cornish, David Llewelyn & Tanya Aplin, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* (Sweet & Maxwell, 8th Ed, 2013) at para 7-02. When seeking to identify the inventive concept, one is 'concerned with the identification of the *core (or kernel, or essence) of the invention* – the idea or principle … which entitles the inventor's achievement to be called inventive' … : *Generics (UK) Limited v H Lundbeck A/S* [2009] UKHL 12 at [30].
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> 64 The quest for the inventive concept is heavily fact-dependent but where *something in the Invention helps to solve a particular problem or answer a particular question in a new way*, this will generally be regarded as an inventive contribution. However, other types of contributions, such as the perfection or improvement of a solution, may also be recognised as inventive. Merely contributing 'unnecessary detail' to an invention or managerial and entrepreneurial contributions such as the provision of money, facilities, materials and the like will not be regarded as inventive contributions: Lionel Bently & Brad Sherman, *Intellectual Property Law* (Oxford University Press, 3rd Ed, 2009) at pp 530–531.
>
> [emphasis added]

23 In this case, the problem faced was that conventional hinged doors require a large swing area to open outward whereas conventional sliding doors have insufficient width door entrance as half the door frame is occupied by a door panel. Further, the doors of conventional sliding doors are relatively

Version No 1: 05 Dec 2025 (13:13 hrs)

expensive and it is difficult to repair the doors and tracks when damaged.[47] The proposed invention allows the sliding of one door panel and the swinging opening of the "juxtaposed" doors, achieving "a widest door opening" while "maximi[sing] the space available within a room or a hall".[48]

24 Section 113(1) of the Patents Act 1994 (2020 Rev Ed) ("Patents Act") states that:

> … an invention for a patent … is … taken to be that specified in a claim of the specification of the application or patent (as the case may be) as interpreted by the description and any drawings contained in that specification, and the extent of the protection conferred by a patent or application for a patent is to be determined accordingly.

25 In ascertaining the true construction of a patent specification, the claims themselves are the principal determinant, while the description and other parts of the specification may assist in the construction of the claims (*First Currency Choice Pte Ltd v Main-Line Corporate Holdings Ltd* [2008] 1 SLR(R) 335 ("*First Currency*") at [23]). The claims should be construed as part of the whole specification. However, where the claims have an ordinary and plain meaning, reliance ought not to be placed on the language used in the body of the specification so as to make them mean something different (*First Currency* at [24]).

26 I reproduce the claims in the SK Patent in the table below.[49] There are two other claims – Claims 6 and 7, which are excluded from the table and the

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47 Ng Say Keong's affidavit filed on 7 February 2025 at p 82, lines 9–11, 15–17 and 22–24.

48 Ng Say Keong's affidavit filed on 7 February 2025 at p 83, lines 30–31 and p 84, lines 14–16.

49 CBOD Vol V at pp 67–68.

Version No 1: 05 Dec 2025 (13:13 hrs)

analysis that follows because they are process claims which are not the subject of dispute.[50] For ease of reference, I adopt the features of the claims as identified by Mr Awyong.[51]

No	Features of the Claim
1.1	A sliding door system, comprising:
1.2	a door frame having a top inner edge;
1.3	a first door panel and a second door panel which are slidable with each other, characterized in that
1.4	both the first door panel and the second door panel are provided with a top horizontal bar and a bottom horizontal bar, wherein the base of the bottom horizontal bar of the two panels is provided with elongated slot and one end of each of the base of the two door panels is extended to form an abutment which is slidable within the slots of each of the bottom bar;
1.5	and the top horizontal bar has a male abutment and a female recess where the male abutment formed on one of the panel is slidable within the recess of the top horizontal bar of the other door panel,
1.6	whereby the first door panel and the second door panel are capable of slidably positioned at juxtaposed position;
1.7	a pair of pivot device to pivotally mounted one panel of the door to the edge of the one of the two door panels, such that the doors at juxtaposed position is capable of swinging open about the pivot point on the door frame,
1.8	thereby a widest door opening is obtained via sliding of one door panel and the swinging opening of the juxtaposed doors.

50 Defendants' closing submissions filed on 24 June 2025 ("DCS") at para 67; Claimant's reply submissions filed on 8 July 2025 ("CRS") at para 26.

51 Ron Awyong's affidavit filed on 7 February 2025 at pp 59–77.

Version No 1: 05 Dec 2025 (13:13 hrs)

2.1	The sliding door system as set forth in Claim 1, wherein the door frame is wall-mounted to support the first and second door panel for which the door is pivotally mounted at one edge of the door frame.
3.1	The sliding door system as set forth in Claim 1, wherein the door size of the first door panel and the second door panel is identical, or of different size.
4.1	The sliding door system as set forth in Claim 1, wherein the female recess on the top horizontal bar of one door panel is provided with a male abutment which will be stopped at the end of the sliding movement when the edge of one door panel touches the edge of the other panel in the course of a full sliding of the sliding door.
5.1	The sliding door system as set forth in Claim 1, wherein the door swings to a maximum of 180 degree.

27 The parties agree that Claims 2 to 5, which must be read with Claim 1, are dependent on Claim 1.[52]

28 When construing claims and undertaking inquiries to determine if a patent is valid, the court dons the mantle of the person skilled in the art (*Element Six* at [63]). The person skilled in the art, apart from possessing common general knowledge in the art, also has a practical interest in the subject matter of the patent and is likely to act on the directions given in it with the desire to make the directions in the patent work. He is a reasonably intelligent but unimaginative workman or technician who has the skill to make routine workshop developments, but not to exercise inventive ingenuity or think laterally (*Element Six* at [67], citing *Ng Kok Cheng v Chua Say Tiong* [2001] 2 SLR(R) 326 at [21]; *First Currency* at [28]; Ng-Loy Wee Loon, *Law*

[52] Claimant's closing submissions filed on 24 June 2025 ("CCS") at para 39; DCS at para 62.

Version No 1: 05 Dec 2025 (13:13 hrs)

of Intellectual Property of Singapore (Sweet & Maxwell, Revised 3rd Ed, 2022) at para 30.1.12).

29 In this case, the person skilled in the art is a notional person working in the door industry, with technical expertise in sliding doors. He possesses common general knowledge of sliding doors and has a practical interest in achieving the widest door opening in limited spaces.

Issue 1: Whether the SK Patent is valid

Applicable law

30 Under s 80(1)(*a*) of the Patents Act, the validity of a patent can be challenged on the ground that the invention is not a patentable invention. Where a patent is found to be invalid, it may be revoked by the court.

31 Section 13(1) of the Patents Act provides that a patentable invention is one that satisfies the following conditions:

(a) it is new (s 13(1)(*a*)) ("novelty requirement");

(b) it involves an inventive step (s 13(1)(*b*)) ("inventive step requirement"); and

(c) it is capable of industrial application (s 13(1)(*c*)).

32 Only the former two requirements are put in issue in the present case.

Novelty requirement

33 There are four steps in the assessment of the novelty requirement (*Rohm and Haas Electronic Materials CMP Holdings, Inc v NexPlanar Corp* [2018] 5 SLR 180 at [63]):

Version No 1: 05 Dec 2025 (13:13 hrs)

(a) Determine the relevant state of the art.

(b) Interpret the prior art material from the perspective of the person skilled in the art at the date the material entered the prior art and without use of hindsight or mosaicking. Consider what each piece of prior art disclosed.

(c) Interpret the scope of the claimed invention from the perspective of the person skilled in the art and by reference to the patent specifications.

(d) Compare the prior art against the claimed invention and determine whether the prior art anticipated the claimed invention.

34 Section 14(1) provides that "[a]n invention is taken to be new if it does not form part of the state of the art". Section 14(2) defines the "state of the art":

> The state of the art in the case of an invention is taken to comprise all matter … which has at any time before the priority date of that invention been made available to the public (whether in Singapore or elsewhere) by written or oral description, by use or in any other way.

35 Generally, the priority date is the date of the filing of the application (s 17(1) of the Patents Act).

36 The next step is to determine whether the claimed invention was anticipated by the prior disclosure or prior art: *Lee Tat Cheng v Maka GPS Technologies Pte Ltd* [2018] 3 SLR 1334 ("*Lee Tat Cheng (HC)*") at [76]–[77].

37 Anticipation requires "enabling disclosure": see *Merck & Co Inc v Pharmaforte Singapore Pte Ltd* [2000] 2 SLR(R) 708 at [38]. The prior art must contain "clear and unmistakable directions" to the invention: see *Mühlbauer AG*

Version No 1: 05 Dec 2025 (13:13 hrs)

v Manufacturing Integration Technology Ltd [2010] 2 SLR 724 ("*Mühlbauer*") at [17]. The disclosure must be sufficient to enable a person skilled in the art to make the invention: *Mühlbauer* at [17].

Inventive step requirement

38 The next issue is whether the patent fulfils the inventive step requirement. This is also known as the obviousness inquiry.

39 Section 15 of the Patents Act states that "[a]n invention is taken to involve an inventive step if it is not obvious to a person skilled in the art, having regard to any matter which forms part of the state of the art". The relevant state of the art for the inventive step requirement is the same state of the art for the novelty requirement, except that unpublished patent applications which have a priority date earlier than that of the invention in question are disregarded (see s 15 read with ss 14(2) and 14(3) of the Patents Act; *Millennium Pharmaceuticals, Inc v Zyfas Medical Co* [2024] 5 SLR 1435 ("*Millennium*") at [80]).

40 The court adopts the four-step "*Windsurfing*" test (derived from *Windsurfing International Inc v Tabur Marine (Great Britain) Ltd* [1985] RPC 59 at 73–74) to determine whether an alleged invention involves an inventive step (see *Millennium* at [81], referring to *First Currency* at [41]–[42]).

(a) Identify the inventive concept embodied in the claim, or construe it: *Mühlbauer* at [20(a)]. A purposive approach is taken to claim construction: *Mühlbauer* at [22]–[24]. The purposive approach asks: what would the hypothetical person skilled in the art have understood the patentee to mean by choosing to use the word/phrase (the cause of

Version No 1: 05 Dec 2025 (13:13 hrs)

the dispute) in the claim at the time of the patent application? (*Lee Tat Cheng v Maka GPS Technologies Pte Ltd* [2018] 1 SLR 856 ("*Lee Tat Cheng (CA)*") at [41(c)]).

(b) Identify (i) the notional person skilled in the art (*ie*, skilled but unimaginative addressee in the art at the priority date) and (ii) impute to him what was, at that date, common general knowledge in the art in question. The skilled but unimaginative addressee is only a "diligent researcher" and may be entitled to disregard a piece of prior art that he did not know of and was not likely to know of or pay attention to: *First Currency* at [38]–[41].

(c) Identify what, if any, differences exist between the matter cited as forming part of the "state of the art" and the inventive concept of the claim or the claim as construed.

(d) Whether, viewed without any knowledge of the alleged invention in the claim, those differences constitute steps which would have been obvious to the skilled man or whether they require any degree of invention.

41 It bears emphasis that this is necessarily a fact-specific exercise. The inquiry is one of obviousness, not simplicity. This has been made clear by the Court of Appeal in *First Currency* at [51] and [54]:

> 51 … It is up to the court to decide the question, which is 'a kind of jury question' (*Windsurfing* ([41] supra) at 71): Is the invention in question obvious? … Furthermore, in assessing the obviousness of an alleged invention, *it must always be remembered that simplicity is not equivalent to obviousness*.
>
> …
>
> 54 … Although some might have viewed the invention as a simple one, this court noted that simplicity in itself had never

Version No 1: 05 Dec 2025 (13:13 hrs)

> been a bar to inventiveness, and reiterated that *ex post facto* analysis could often be unfair to inventors (*FE Global Electronics* at [45]–[46]; *Peng Lian Trading* at [29]). *Indeed, it cannot be gainsaid that the hallmark of many truly remarkable inventions is precisely their simplicity.*
>
> [emphasis added]

Applying the law to the facts

42 For the purposes of the present proceedings, it is not in dispute that the priority date is the date of the filing of the patent application (*ie*, 27 March 2014). It is also agreed that the prior art to consider is the Japanese Patent. This is both in reference to the novelty requirement and the inventive step requirement. The translated patent publication of the Japanese Patent states that the "invention belongs to the technical field of sliding doors with hinged door mechanisms that partition openings in buildings."[53]

43 In gist, Mr Awyong is of the opinion that Claim 1 is valid but Claims 2 to 5 are invalid.[54] Mr Awyong states that Claim 1 in the SK Patent is novel notwithstanding the Japanese Patent.[55] As for Claims 2, 4 and 5, Mr Awyong opines that they are novel but each claim is "obvious in the eyes of the person skilled in the art" and therefore fails the inventive step requirement.[56] Claim 3 lacks novelty and an inventive step and is thus also invalid.[57]

44 In his closing submissions, Chow Weng Weng ("Mr Chow") made clear that the Defendants' position is to endorse Mr Awyong's findings on the whole

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53 CBOD Vol I at p 79.

54 Ron Awyong's affidavit filed on 7 February 2025 at p 53, para 3.1 and p 56, paras 3.19–3.20.

55 Ron Awyong's affidavit filed on 7 February 2025 at p 53, para 3.2.

56 Ron Awyong's affidavit filed on 7 February 2025 at p 56, para 3.19.

57 Ron Awyong's affidavit filed on 7 February 2025 at p 56, para 3.20.

Version No 1: 05 Dec 2025 (13:13 hrs)

as they are "uncontested and should be adopted".[58] It is the Defendants' case that the court should give full weight to Mr Awyong's conclusion as his opinions are "reasoned, coherent, and independent" and there has been no credible challenge to his impartiality nor any alternative expert opinion.[59] On the other hand, Mr Ng contends that Mr Awyong was correct in his conclusion on Claim 1 but erred in his findings on Claims 2 to 5.[60]

45 I turn now to address each claim (excluding Claims 6 and 7) in the SK Patent.

Claim 1

46 The parties agree that Claim 1 of the SK Patent is novel and inventive. Mr Chow has stated unequivocally that the findings of Mr Awyong should be adopted.[61]

47 In any event, I agree with Mr Awyong that Claim 1 is novel and involves an inventive step. Particularly, the Japanese Patent does not disclose features 1.4 and 1.5 (see [26] above).[62] For instance, the Japanese Patent does not disclose the door panel having a "male abutment" and a "female recess" at the "top horizontal bar", neither does it say that it has "an elongated slot" at the base of the bottom horizontal bar. The technical effect of features 1.4 and 1.5 is to provide a simple and effective mechanism to allow one panel to be securely and slidably mounted to the other panel which is pivotally mounted to a door

58 DCS at para 66.

59 DCS at paras 69–70.

60 CCS at para 54.

61 DCS at paras 66 and 70.

62 Ron Awyong's affidavit filed on 7 February 2025 at pp 53–54, paras 3.3–3.7.

Version No 1: 05 Dec 2025 (13:13 hrs)

frame.[63] A person skilled in the art would not be motivated to modify the Japanese Patent to arrive at the solution described in the SK Patent since the Japanese Patent "does not teach, suggest or motivate the person skilled in the art" to do so.[64]

48 Hence, I accept that Claim 1 is valid and shall not discuss it further.

Claims 2, 3, 4 and 5

49 Mr Awyong's position is that Claims 2, 4 and 5 are novel but not inventive, whereas Claim 3 is neither novel nor inventive. A number of arguments were canvassed by Mr Awyong in the Expert Report and at trial. These arguments were endorsed entirely by Mr Chow. However, I have no hesitation rejecting these arguments.

50 Each of Claims 2 to 5 incorporates *all* the features of Claim 1 and *adds* a respective feature to Claim 1. I have held Claim 1 to be novel and inventive. The feature in Claim 2 states that "the door frame is wall-mounted to support the first and second door panel for which the door is pivotally mounted at one edge of the door frame". According to Mr Awyong, this means that the SK Patent has only the turning door panel pivotally mounted to the door frame while the sliding door panel is independent and not "pivotally mounted".[65] The feature in Claim 3 provides that "the door size of the first door panel and the second door panel is identical, or of different size". The feature in Claim 4 states that "the female recess on the top horizontal bar of one door panel is provided with a male abutment which will be stopped at the end of the sliding movement when

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63 Ron Awyong's affidavit filed on 7 February 2025 at p 55, para 3.10.

64 Ron Awyong's affidavit filed on 7 February 2025 at p 55, para 3.13.

65 Official transcript (20 May 2025) at p 39, lines 4–8.

Version No 1: 05 Dec 2025 (13:13 hrs)

the edge of one door panel touches the edge of the other panel in the course of a full sliding of the sliding door". Mr Awyong explained that this is in effect a stopper which prevents the sliding door panel from going beyond the turning door panel.[66] The feature in Claim 5 states that "the door swings to a maximum of 180 degree". When each *additional* feature in Claims 2 to 5 is considered in conjunction with the novel and inventive Claim 1 to which it relates to and incorporates, it must follow that Claims 2 to 5 are novel and inventive.

51 As a matter of completeness, I address an argument advanced by Mitchel Chua ("Mr Chua"), counsel for Mr Ng, in his closing submissions. He sought to rely on the SK Patent having been successfully registered after an examination by Dr Chua Sin Siu who had regard to the Japanese Patent as a basis for finding that all the claims within the SK Patent were novel and inventive.[67]

52 Where revocation applications are brought by way of defence and counterclaim in the context of infringement proceedings, it is necessarily the case that the patent was granted in the first place after the examiner had regard to the prior art at the relevant time. Otherwise, there cannot be any alleged infringement to speak of. When such applications come before the court, the court exercises its original jurisdiction to determine the validity of the patent and to order the revocation of the patent if deemed invalid (*Sunseap Group Pte Ltd v Sun Electric Pte Ltd* [2019] 1 SLR 645 ("*Sunseap*") at [64]–[67]). The IPOS examiner's findings cannot be a ground for the court to find the patent valid. If so, that would render the court's exercise of its original jurisdiction nugatory. The fact that Dr Chua Sin Siu had previously considered the Japanese

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66 Official transcript (20 May 2025) at p 44, lines 1–4.

67 CCS at para 53.

Version No 1: 05 Dec 2025 (13:13 hrs)

Patent and granted the SK Patent does not preclude this court from reaching a different conclusion on the same prior art. The court must undertake its own independent assessment of validity based on the evidence before it and in the light of the submissions made by both parties.

53 Having examined the Japanese Patent and considered the parties' submissions, I am satisfied that every claim in the SK Patent is valid.

Issue 2: Whether the Defendants committed infringement of the SK Patent

Applicable law

54 Section 66(1) of the Patents Act reads as follows:

> **Meaning of infringement**
>
> 66.—(1) … a person infringes a patent for an invention if, but only if, while the patent is in force, the person does any of the following things in Singapore in relation to the invention without the consent of the proprietor of the patent:
>
> > (*a*) where the invention is a product, the person makes, disposes of, offers to dispose of, uses or imports the product or keeps it whether for disposal or otherwise;
> >
> > …

55 The burden of proof is generally on the claimant to show that the defendant has done one or more of the prohibited acts referred to in s 66(1) (see *Millennium* at [94]). If an allegedly infringing article falls within the words of one of the claims of a patent properly construed, the patent would have been infringed. To constitute infringement, the alleged infringing article must usurp each and every one of the essential elements of the claim (see *Lee Tat Cheng (CA)* at [41(f)]).

Version No 1: 05 Dec 2025 (13:13 hrs)

Mr Awyong's opinion

56 Mr Awyong concludes that the SD Door does not infringe the SK Patent because it lacks feature 1.4 of Claim 1 which requires that:[68]

> both the first door panel and the second door panel are provided with a top horizontal bar and a bottom horizontal bar, wherein the base of the bottom horizontal bar of the two panels is provided with elongated slot and one end of each of the base of the two door panels is extended to form an abutment which is slidable within the slots of each of the bottom bar;

57 Feature 1.4 facilitates the sliding mechanism of the SK Door.[69] Mr Awyong identifies three specific characteristics (or lack thereof) of the SD Door that place it outside the scope of feature 1.4:

(a) First, the SD Door has a bottom horizontal bar for each door panel, but only the first door panel has an elongated slot at the base of its bottom horizontal bar. The second door panel does not have such a slot.[70]

(b) Second, whilst the SD Door has an abutment extending from the base of the bottom horizontal bar of the second door panel, the abutment of the first door panel does not extend from the base but starts at the top of the bottom horizontal bar.[71]

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68 Ron Awyong's affidavit filed on 7 February 2025 at p 52, para 2.2.

69 Ng Say Keong's affidavit filed on 7 February 2025 at p 87, lines 16–24.

70 Ron Awyong's affidavit filed on 7 February 2025 at p 52, para 2.5.

71 Ron Awyong's affidavit filed on 7 February 2025 at p 52, para 2.6; Official transcript (20 May 2025) at p 15, lines 14–29.

Version No 1: 05 Dec 2025 (13:13 hrs)

(c) Third, the abutments do not extend from one end of each of the base of the two door panels as required. Instead, they traverse along the length of the slide horizontal portion and the turn horizontal portion.[72]

58 At trial, Mr Awyong explained that he used the "antecedent basis" to interpret the terms "elongated slot" and "slots" in feature 1.4. He testified that:[73]

> Antecedent means the first time we mentioned something, we say 'a slot'. But, subsequently, when we refer to the same feature again, we use the word 'the slot'.

In other words, the subsequent mention of "slots" was taken to refer to the prior mention of the "elongated slot".[74] Mr Awyong also referred to the last part of feature 1.4 where it refers to "an abutment which is slidable within the slots of each of the bottom bar". He testified at trial that feature 1.4 clearly intends to have "both the bottom bars as well as each slot of the bottom bar". It may thus be "inferred that the earlier singularity could be a mistake" by the drafter.[75]

The parties' cases

59 Mr Chow agrees with Mr Awyong's opinion. He contends that only one base of the bottom horizontal bar of the two SD Door panels possesses an elongated slot. Neither of the abutments on each door panel is formed by extending from one end of a respective base. At best, it can be said that the abutment of the slide horizontal portion extends from the lower half portion of

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72 Ron Awyong's affidavit filed on 7 February 2025 at p 53, para 2.7.

73 Official transcript (20 May 2025) at p 23, lines 1–4.

74 Official transcript (20 May 2025) at p 23, lines 1–12.

75 Official transcript (20 May 2025) at p 25, lines 21–27.

Version No 1: 05 Dec 2025 (13:13 hrs)

the slide horizontal portion whereas the abutment of the turn horizontal portion extends from the upper half portion of the turn horizontal portion.[76]

60 On the other hand, Mr Chua challenges Mr Awyong's interpretation of the "slot(s)" in feature 1.4. Mr Chua's main argument is that there was an intentional different usage of numbers (*ie*, "slot" versus "slots") and an adjective (*ie*, "*elongated* slot" versus "slots"). It was drafted in such language for a reason. The usage of "elongated" in the former "slot" must ascribe it depth as compared to the latter "slots".[77] Moreover, the former "elongated slot" is identified in reference to "the *base* of the bottom horizontal bar" whereas the latter "slots" are identified in reference to "each of *the bottom bar*". They are thus located in different parts of the bottom bars and are different slots altogether.[78] Mr Chua says that the "elongated slot" is found in the yellow box while the "slots" are found in the light blue box, as illustrated in Figure 1.[79]

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76 DCS at paras 59–60.

77 CCS at paras 60–62.

78 CCS at paras 63–64.

79 CCS at para 70.

Version No 1: 05 Dec 2025 (13:13 hrs)

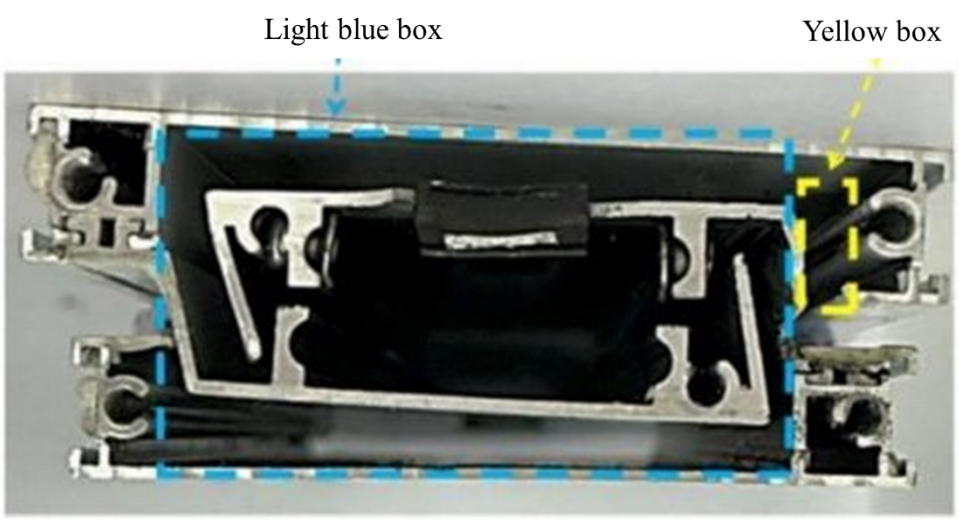


Figure 1: Sectional view of the horizontal portions of the SD Door

61 Under the above interpretation, the abutments extend from one end of each of the base of the two door panels and are slidable within the different "slots" of the SD Door.[80] They are identified in Figure 2 as the "abutting members".

[80] CCS at para 71.

Version No 1: 05 Dec 2025 (13:13 hrs)

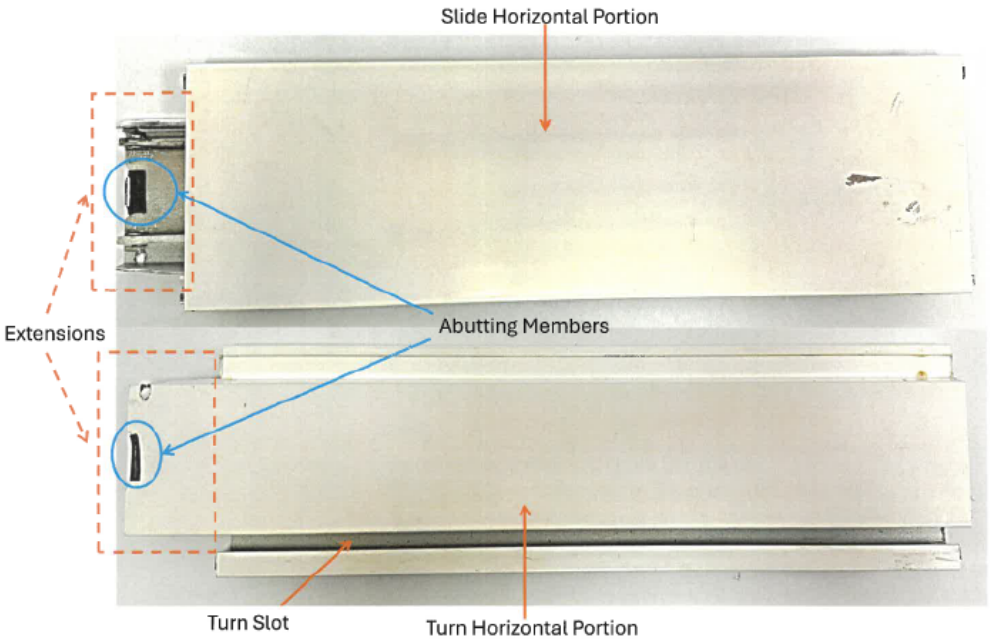


Figure 2: Top view of the horizontal portions of the SD Door

62 Mr Chua presents an alternative argument. He says that even if Mr Awyong's construction of feature 1.4 is accepted, the slots in the light blue box (as labelled in Figure 1) satisfy the description of both the "elongated slot" and "slots" as they are found within the "base" of the bottom horizontal bar where the abutments are slidable.[81] He contends that Mr Awyong failed to properly identify what constitutes the "abutments" in the SD Door.[82] This was the exchange between Mr Chua and Mr Awyong at trial:[83]

> Mr Chua: … [referring to Figure 1] So again we have indicated in blue with the blue serrated lines the slot or which the claimant has defined as a hole, that is the hole that is found within the cavity of

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81 CCS at para 73.

82 CCS at para 77.

83 Official transcript (20 May 2025) at p 24, lines 8–26.

Version No 1: 05 Dec 2025 (13:13 hrs)

> the two horizontal bars when you put them together and you slide them into one another. So the abutment actually slides through the bottom horizontal bars.
>
> Mr Awyong: It slides through horizontal bar but it doesn't slide within the slots. That's my---that's my thought.
>
> Mr Chua: But---okay. I mean, because the way we have interpreted it, slots just simply means a hole. So it slide within the hole of the bottom horizontal bar.
>
> Mr Awyong: Based on claimant's own interpretation, yes, you can infer it that way.
>
> Mr Chua: Okay, thank you.
>
> Mr Awyong: But I---sorry, pardon me but I don't really agree with that interpretation.
>
> Mr Chua: I understand and I respect you for your own understanding and interpretation.
>
> Mr Awyong: Sure. Sure.
>
> Mr Chua: But so far as the claimant's interpretation, you do agree that it's a possibility - the way we have read it.
>
> Mr Awyong: Possibility in terms how the thing functions.
>
> Mr Chua: Yes.
>
> Mr Awyong: But not in terms of the plain language as well as the interpretation.

63 Expanding on his alternative argument, Mr Chua drew a distinction between the "base of the bottom horizontal bar" and the "base of the two door panels".[84] With that understanding, Mr Chua said that the "abutments" need not extend from the base of the bottom horizontal bar as long as they are from the base of the two door panels, *ie*, any point below the two door panels. Mr Awyong agreed.[85] On this premise, Mr Chua proposed that the "extended

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84 CCS at paras 74–76; Official transcript (20 May 2025) at p 20, lines 9–13.

85 CCS at paras 74–76; Official transcript (20 May 2025) at p 20, lines 19–24.

Version No 1: 05 Dec 2025 (13:13 hrs)

portion could potentially refer to the metal outcropping" as seen in Figure 2. Mr Awyong responded that "it could be interpreted as an extension or abutment". However, Mr Awyong elaborated that "[s]ubsequent to the abutment, the claims features---defines that the abutment is slidable within the slots of each of the bottom bar" and from his understanding and observation, "this abutment [does not] slide within the slots itself".[86]

64 Overall, it is Mr Ng's position that in either case, the Defendants usurped the essential elements in feature 1.4. Mr Ng asserts that the Defendants' SD Door contains all the same features as described in Claims 1 to 5 of the SK Patent and therefore infringes the SK Patent.[87]

Applying the law to the facts

65 The crux of the contention here is whether the essential feature 1.4 is present in the SD Door.

66 Having examined the evidence, I agree with Mr Awyong's opinion that the SD Door does not infringe Claim 1 of the SK Patent as it does not have feature 1.4. Turning to Mr Chua's main argument, Mr Awyong's interpretation of "elongated slot" and "slots" as referring to the same opening is consistent with the purposive approach adopted in claim construction. Although the earlier part of feature 1.4 refers to "elongated slot" in the singular, the subsequent part refers to an abutment being "slidable within the *slots* of *each of the bottom bar*" [emphasis added] in the plural. This indicates that feature 1.4 intends to have two bottom bars (one for each door panel) and slots in them. I find that the earlier singular reference may very well have been a drafting oversight.

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86 Official transcript (20 May 2025) at p 21, lines 8–23.

87 CCS at para 56.

Version No 1: 05 Dec 2025 (13:13 hrs)

Moreover, the functionality of the door requires the extension to be from both doors.[88] Mr Chua's interpretation, whilst creative, requires reading distinctions into the claim language that are not clearly supported by the construction of the patent specification as a whole. For these reasons, I reject Mr Chua's main argument.

67 Mr Chua's alternative argument does not persuade me to reach a different conclusion. Even if I accept that the portion indicated by the light blue box in Figure 1 suffices to satisfy both the "elongated slot" and "slots" descriptions, and even if I accept that Mr Chua's broader interpretation of where abutments may extend from and that the "metal outcropping" may be considered an abutment, the evidence does not establish that the abutment is slidable within the slots as specified in feature 1.4. This element is simply missing. Mr Chua is offering a strained construction of the language of the SK Patent claim to make the SD Door fit within the claim. Having regard to the language of the claim, I dismiss Mr Chua's alternative argument.

68 In sum, the SD Door only has an elongated slot in the first door panel's bottom horizontal bar, not in both panels as required by the claim. Additionally, the abutment of the first door panel starts at the top of the bottom horizontal bar rather than extends from the base, and the abutments traverse along the length of the horizontal portions rather than extend from one end of each base as specified in the claim. These differences place the SD Door outside the scope of feature 1.4. As such, I find that the Defendants have not infringed the SK Patent. In light of my finding that there is no infringement of independent Claim 1, it is axiomatic that there could not have been an infringement of dependent Claims 2 to 5, each of which incorporates all the features of Claim 1. Given that

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88 Official transcript (20 May 2025) at p 25, lines 21–30.

Version No 1: 05 Dec 2025 (13:13 hrs)

no infringement is found, I will not go on to discuss the defences under s 70 and s 69(1) of the Patents Act raised in the Defence and Counterclaim (Amendment No 1).[89]

Issue 3: Whether the Defendants are liable for the tort of passing off

69 Mr Ng sells his slide-and-swing doors by reference to the SK Name. The Defendants sell slide-and-swing doors imported from Supreme Door MY which they refer to as "SD Doors". Mr Ng's case is that the Defendants have misled customers into thinking that the doors they sell are from or associated with S & K Solid Wood Doors by, *inter alia*: (a) having their employees represent themselves as "SK Doors" employees to the Relative during the installation of SD Doors in the Relative's home; and (b) installing an SK Door as their toilet door in their office and using it as a sample.[90] The Defendants deny Mr Ng's allegation.[91] It appears that neither SK Doors nor SD Doors have their respective logos displayed on the doors themselves.

Applicable law

70 There are three elements that a claimant must prove to succeed in an action for passing off: (a) goodwill in a business; (b) misrepresentation; and (c) damage (*Lifestyle 1.99 Pte Ltd v S$1.99 Pte Ltd* [2000] 1 SLR(R) 687 ("*Lifestyle 1.99*") at [17], citing with approval *Reckitt & Colman Products Ltd v Borden Inc* [1990] 1 All ER 873 at 880).

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89 DCC at paras 29–30.

90 SOC at paras 23–27.

91 DCC at paras 23 and 27.

Version No 1: 05 Dec 2025 (13:13 hrs)

Goodwill

71 The concept of goodwill has been explained in the oft-quoted passage of Lord Macnaghten in *The Commissioners of Inland Revenue v Muller & Co's Margarine, Limited* [1901] AC 217 at 223–224 (cited by *Lifestyle 1.99* at [18] and *Singsung Pte Ltd v LG 26 Electronics Pte Ltd* [2016] 4 SLR 86 ("*Singsung*") at [32]):

> It is a thing very easy to describe, very difficult to define. It is the benefit and advantage of the good name, reputation, and connection of a business. It is the attractive force which brings in custom. It is the one thing which distinguishes an old-established business from a new business at its first start …

72 Goodwill does not exist on its own. It attaches to a business and is manifested in the custom that the business enjoys. Goodwill may be proved by evidence of sales or of expenses incurred in promoting the goods and services in association with the mark, brand or get-up which they bear (*Singsung* at [34]).

73 Mr Ng contends that the SK Name has been "continuously and extensively used" by him for nearly two decades in his business. It has been used both online and offline in promotion of his products, especially his slide-and-swing doors. Some of the online platforms include Facebook, Pinterest, Tumblr and X (formerly known as Twitter).[92] S & K Solid Wood Doors also has its own website which features its products including the slide-and-swing doors.[93] The extent of S & K Solid Wood Doors' advertising was even acknowledged by Joe in his affidavit:[94]

> The SK Doors are extensively advertised on the internet, with dedicated websites actively promoting their products.

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92 CBOD Vol II at p 48, para 65.

93 CBOD Vol II at pp 572–630.

94 CBOD Vol IV at p 95, para 34.

Version No 1: 05 Dec 2025 (13:13 hrs)

> Information regarding SK Doors, including their specifications, sources, and locations for purchase, is readily available online …

74 The financial statements of S & K Solid Wood Doors indicate that it has grown substantially over the years, with its net profit increasing from $24,992.51 in 2019 to $130,794.90 in 2022.[95] Mr Ng claims to have sold approximately 350,000 SK Doors in Singapore since the filing of the SK Patent in 2014. He has provided a long list of customers including interior designers, contractors, private developers and the Housing Development Board.[96] S & K Solid Wood Doors also has brochures featuring its doors and the SK Name is prominently displayed in the same.[97] I am satisfied that the evidence adduced by Mr Ng demonstrates that S & K Solid Wood Doors has sufficient market presence. It has been around in the market for more than a decade, has been advertised on various platforms and enjoys substantial sales volume. In any event, the Defendants do not dispute that Mr Ng has acquired goodwill in the business relating to SK Doors.[98]

75 Therefore, the element of goodwill is established.

Misrepresentation

76 In establishing misrepresentation, the claimant must show that there was a false representation, giving rise to actual confusion or a likelihood of confusion on the part of the relevant public (*Dr Who Waterworks Pte Ltd v Dr Who (M) Sdn Bhd* [2023] SGHC 156 at [175] and [177]). The relevant public

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95 CBOD Vol II at pp 49, 648 and 676.

96 CBOD Vol II at pp 49, 275–282.

97 CBOD Vol II at pp 524–569.

98 DCS at para 6; Defendants' reply submissions filed on 8 July 2025 ("DRS") at para 6.

Version No 1: 05 Dec 2025 (13:13 hrs)

refers to the actual and potential customers of the claimant (*Novelty Pte Ltd v Amanresorts Ltd* [2009] 3 SLR(R) 216 ("*Novelty*") at [71]–[76]). The relevant time of confusion is at the time of purchase (*Staywell Hospitality Group Pty Ltd v Starwood Hotels & Resorts Worldwide, Inc* [2014] 1 SLR 911 ("*Staywell*") at [113]–[116]).

Distinctiveness

77 The issue of distinctiveness is a threshold inquiry in determining whether the defendant has committed an actionable misrepresentation. If the claimant's mark or get-up is not distinctive of the claimant's goods and/or services, there can be no misrepresentation even when the defendant uses an identical or similar mark or get-up (*Singsung* at [38]).

78 In the present case, the name in question is the SK Name. The business was named "SK" because it stands for "Say Keong", the first name of Mr Ng. While "SK" has no obvious relevance to the character or quality of the slide-and-swing doors, it is a common two-letter combination. There is difficulty in finding that such letter combinations possess inherent distinctiveness. The policy underlying this approach was explained in the old House of Lords case of *The Registrar of Trade Marks v W & G Du Cros Ltd* [1913] AC 624. There, the mark was "W & G", which represented the initials of the names of the applicant's predecessor in business. The goods were motor vehicles. Lord Parker of Waddington held that the mark was not distinctive as there were likely individuals or firms with the same initials wishing to use the letters "W" and "G" and it would be a "strong thing to deprive them of the right to do so" (at 635–636).

79 In a similar vein, the courts have expressed caution about granting monopolies over common elements. It was observed in *Han's (F & B) Pte Ltd*

Version No 1: 05 Dec 2025 (13:13 hrs)

v Gusttimo World Pte Ltd [2015] 2 SLR 825 ("*Han's*") that common surnames such as "Han" typically fall "towards the lower end of the spectrum" in terms of the level of inherent distinctiveness (at [90]). In *McDonald's Corp v Future Enterprises Pte Ltd* [2005] 1 SLR(R) 177, the Court of Appeal also noted concerns about allowing parties to "monopolise the prefix 'Mc' as far as food and beverages were concerned" (at [54]). Whilst these cases were decided in the context of trade mark invalidity and registration rather than passing off claims, the legal principles regarding distinctiveness and the court's hesitance to allow the monopolisation of commonly used terms are equally applicable to the passing off analysis.

80 Nevertheless, such marks can be protected if they can be shown to have acquired a secondary meaning through use – namely, they have become distinctive of the claimant's business (*Lifestyle 1.99* at [27]). Indeed, notwithstanding the above policy reasons, "[t]here is ample authority that initials or arbitrary combinations of letters may be distinctive, and that the use of confusingly similar letters will be restrained" (Christopher Wadlow, *Wadlow on The Law of Passing-Off* (Sweet & Maxwell, 6th Ed, 2021) at para 8-227). For instance, in *The Singapore Professional Golfers' Association v Chen Eng Waye* [2013] 2 SLR 495 ("*SPGA*"), the Court of Appeal recognised the appellant's name and initials as distinctive. This was even though the name (Singapore Professional Golfers Association) was a straightforward description of an association for professional golfers. The initials (SPGA) were deemed to be clearly identified with the appellant and with the activities it organised and promoted (at [39] and [40]). In *The Audience Motivation Company Asia Pte Ltd v AMC Live Group China (S) Pte Ltd* [2016] 3 SLR 517 at [92], the Court of Appeal found that the initials "amc" had become distinctive of the appellant's business within the events management industry in Singapore.

Version No 1: 05 Dec 2025 (13:13 hrs)

81 In my view, the evidence establishes that the SK Name has acquired distinctiveness in Singapore's door industry through Mr Ng's extensive use over nearly two decades. Mr Ng has continuously used the SK Name since the registration of S & K Solid Wood Doors in 2006. He invested substantial resources in promoting his business across multiple online and offline platforms. The commercial success of S & K Solid Wood Doors is demonstrated by its financial growth and pool of customers (see [73]–[74] above). Crucially, the Defendants themselves acknowledge the market dominance of the "SK" brand, asserting that prior to 2023, there were essentially two renowned slide-and-swing doors in Singapore – the SK Door and the PD Door. It is evident that the SK Name denotes the doors of S & K Solid Wood Doors to the exclusion of other traders.

82 Further to the above, evidence of an intention to misrepresent or deceive consumers is strong *prima facie* evidence of distinctiveness of the indicia that has been copied (*Singsung* at [48]). As will be examined later at [87]–[93], there is evidence of the Defendants' intention to confuse consumers as to the true origin of the SD Doors they sell. This reinforces my finding that the SK Name, when used in reference to doors in Singapore, is distinctive of S & K Solid Wood Doors.

Confusion inquiry

83 Next, the misrepresentation in question must give rise to actual confusion (or the likelihood thereof) in order to be actionable under the law of passing off. This is to be assessed from the vantage point of a notional customer with imperfect recollection. While evidence of actual confusion, such as the testimony of a witness, may be helpful in the court's determination of the question, the lack of such evidence is not fatal to a claim (*Singsung* at [40]).

Version No 1: 05 Dec 2025 (13:13 hrs)

84 The confusion inquiry is ultimately a question of fact to be determined by the court in light of the surrounding circumstances (*Singsung* at [40]). Nonetheless, the court is aided by relevant (but not exhaustive) factors such as: (a) the strength of the public's association with the claimant's sign; (b) the similarity of the claimant's and the defendant's respective signs; (c) the proximity of the parties' respective fields of business; (d) the characteristics of the market; and (e) the defendant's intention (*SPGA* at [54], citing Lionel Bently & Brad Sherman, *Intellectual Property Law* (Oxford University Press, 3rd Ed, 2009) at p 760).

85 In a trade mark infringement action, it is impermissible at the confusion stage of the inquiry to consider extraneous factors consisting of steps taken by a trader to differentiate his goods or marks from those of the owner of the incumbent mark (*Staywell* at [163(g)]). To the contrary, in an action for passing off the court is not constrained in the same way that it would be in a trade mark infringement action in identifying the factors it may take into account (*Hai Tong Co (Pte) Ltd v Ventree Singapore Pte Ltd* [2013] 2 SLR 941 ("*Hai Tong*") at [115]). This stems from the different interests that the respective claims protect. In a passing off action, the law seeks to protect a trader from the use of deceptive business practices. In a trade mark infringement action, the law seeks to protect the proprietary rights conferred on a trader by virtue of the registration of his mark (*Han's* at [198]).

86 It is well-established that an intention to deceive is not a necessary ingredient of passing off; the focus is on the actual or anticipated *effect* of the defendant's actions on the minds of those constituting the relevant segment of the public (*SPGA* at [41]). Nonetheless, where an intention to deceive is shown to exist, "it becomes easier to establish that there is a likelihood of deception on the facts on the simple premise that one will tend to achieve that which one

Version No 1: 05 Dec 2025 (13:13 hrs)

specifically sets out to do, and the courts are inclined to infer that this is so" (*SPGA* at [41]). In other words, if it can be shown that the Defendants intended to mislead the public into thinking that they were selling SK Doors, the court is more likely to infer that they have succeeded in causing this confusion.

87 Mr Ng's version of events is as follows. At the Defendants' showroom on 1 August 2023, Mr Seet enquired about the slide-and-swing doors, to which Joe directed Mr Seet to the office on the mezzanine floor where there was a white toilet door. He referred to it explicitly as an "SK Door".[99] When Mr Seet asked whether the door hinge of a slide-and-swing door could be concealed, Joe informed him that the white toilet door was an "SK Door" and that its hinge was concealed.[100] Joe did a demonstration using the toilet door and added that "SK Doors and PD Doors are all similar".[101] It was admitted by Mr Seet at trial that Joe never *explicitly* told Mr Seet that he was being sold an SK Door.[102] However, from Mr Seet's perspective as a potential buyer, the fact that he was presented a sample SK Door and told it was an SK Door, led him to reasonably conclude that the door he was purchasing from the Defendants was an SK Door.[103]

88 In addition, it is highlighted that the sole explicit reference to "SD Door" was in the sales order[104] but this was only sent to Mr Seet after he decided that he wanted to purchase the door. Moreover, a customer may logically assume

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99 Seet Ju Yong Jeremy's affidavit filed on 7 February 2025 at para 9(e); Official transcript (13 May 2025) at p 28, lines 16–25.

100 Seet Ju Yong Jeremy's affidavit filed on 7 February 2025 at para 9(f)(ii); Official transcript (13 May 2025) at p 32, line 21 to p 33, line 2.

101 Seet Ju Yong Jeremy's affidavit filed on 7 February 2025 at p 22, para 7.

102 Official transcript (13 May 2025) at p 33, lines 30–32.

103 Official transcript (13 May 2025) at p 34, lines 4–9.

104 Seet Ju Yong Jeremy's affidavit filed on 7 February 2025 at p 57.

Version No 1: 05 Dec 2025 (13:13 hrs)

that the "SD" reflected SK Door's product code rather than the initials of Supreme Door MY. The arguments regarding SK Door's product code are addressed at [96]–[99] below.

89 The Defendants present a different narrative. Joe claims to have informed Mr Seet that their products were called "SD Doors". When asked for a sample, he informed Mr Seet that there were no samples available.[105] Joe explained that he typically referred to the Defendants' brochures when customers asked about their doors. Despite being informed that there were no available samples, Mr Seet asked to see the door at the mezzanine floor where the administrative staff and sales department were located. Joe asserts that the door was installed many years ago as a toilet door which was used by staff and he never referred to it as a sample. Nevertheless, he brought Mr Seet to the mezzanine floor and demonstrated the functionality of the toilet door. He specifically informed Mr Seet that the toilet door was an SK Door which was not sold by the Defendants. Instead, the Defendants were offering for sale SD Doors. When Mr Seet asked if the hinge could be concealed, Joe repeated twice that the toilet door was an SK Door but confirmed that the hinges for SD Door were indeed concealed.[106] The Defendants maintain that the representations made by Joe as to the similarities between the SK Door and PD Door and the concealed hinges were merely "in the context of a product demonstration".[107]

90 I am not convinced by the Defendants' account. The SK Door was installed at their showroom (albeit at the mezzanine floor where the office was located) and there were various materials (*eg*, dark wood grain finish, black

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105 Koh Chin Keong's affidavit filed on 7 February 2025 at para 17.

106 Koh Chin Keong's affidavit filed on 7 February 2025 at paras 23–27.

107 DCS at para 24.

Version No 1: 05 Dec 2025 (13:13 hrs)

marble finish) with numerical labels plastered on the SK Door (see Figure 3).[108] The presence of separately labelled materials on the door strongly suggests that it was being used as a sample rather than a mere toilet door.



Figure 3: Toilet door at Defendants' registered office address

91 Mr Koh asserted at trial that the SK Door was "never intended to serve as a sample". He explained that they had remaining stock from the time they

108 CBOD Vol IV at pp 106, 109–110.

Version No 1: 05 Dec 2025 (13:13 hrs)

dealt with SK Doors and thus "innocent[ly] use[d]" it as a toilet door.[109] However, this explanation does not withstand scrutiny. If the SK Door was merely leftover stock used as a toilet door, there would be no reason for the Defendants to plaster various material samples with numerical labels on it. The Defendants had by then stopped selling SK Doors for at least half a year. It would have been logical for them to use an SD Door as the toilet door. Curiously, despite the office being a showroom, they did not retain even one sample of an SD Door. The only cogent explanation for the Defendants' conduct is that they were deliberately attempting to mislead customers into thinking that the doors they sold were SK Doors. Additionally, the Defendants' contention that Joe did not outrightly say that the door he was selling was the SK Door[110] is of limited utility. What matters is the actual or anticipated *effect* of the Defendants' actions on the minds of consumers.

92 Apart from the above, in respect of other transactions, Joe wrote "SK" in the Measurement Slips / Work Orders (*ie*, a document to order doors for customers) multiple times even in April 2023 and June 2023.[111] The Measurement Slips / Work Orders were also given to customers.[112] The illogical justification Joe could offer when asked about these documents was that the person taking the measurements may sometimes "unconsciously record it as SK door" even though what they sold were SD Doors.[113]

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109 Koh Thiam Hock's affidavit filed on 7 February 2025 at paras 44–45; Official transcript (14 May 2025) at p 43, line 14 to p 44, line 9.

110 Official transcript (13 May 2025) at p 33, lines 30–32.

111 CRS at para 13; CBOD Vol III at pp 217–218, 220–221.

112 Official transcript (15 May 2025) at p 36, lines 21–24.

113 Official transcript (15 May 2025) at p 36, lines 18–20.

Version No 1: 05 Dec 2025 (13:13 hrs)

93 Accordingly, I am satisfied that the Defendants, in using the SK Door as a sample in their showroom and referring to it as an SK Door, had intended to confuse customers as to the true origin of the SD Doors.

94 Moreover, there were no steps taken by the Defendants to differentiate their doors from those of S & K Solid Wood Doors. Contrary to Mr Yeo's claim, there was no distinctive logo of SD on any of the SD Doors.[114] In fact, when Mr Yeo was questioned about the accuracy of a claim made in his affidavit, he adopted an untruthful position despite clear documentary evidence to the contrary being shown to him.[115]

Mr Chua:	Let me ask you this. When SD doors are sold and installed for customers, are the doors marked with the SD Door trademarks or logos?
Mr Yeo:	No, because SD Door is Supreme Door's short form.
Court:	That doesn't answer the question. Listen to the question.
Mr Chua:	Mr Yeo, I repeat the question to you. When SD doors are sold and installed for customers, are the doors marked with the SD Door logo or trademark?
Court:	Yes or no?
Mr Yeo:	No.
Mr Chua:	[refers Mr Yeo to photographs of SD Doors sold to and installed for the Defendants' customers] Can you confirm that none of these doors bear any branding of the SD Door logos or trademarks?
Mr Yeo:	There's no logo on this door.
Mr Chua:	So Mr Yeo, am I right to say then that paragraph 7 of your affidavit is not correct?

114 CBOD Vol IV at pp 115–124.

115 Official transcript (15 May 2025) at p 47, line 8 to p 48, line 14.

Version No 1: 05 Dec 2025 (13:13 hrs)

Mr Yeo:	What is in paragraph 7?
Mr Chua:	I read to you: [Reads] "Furthermore, the SD Doors are branded under the trademarks SD Door with their distinctive logo."
Mr Yeo:	So you are saying---you're asking me whether we pasted or lab---pasted a label of SD Door on the door?
Mr Chua:	I'm not---
Court:	He's not asking anything, he's referring him to his affidavit where that's what he says. Is this correct or not, the statement in paragraph 7?
Mr Yeo:	Sorry, so you're saying that this was pasted on the door?
Court:	For the second time and I will not repeat my question again because if hereafter he doesn't answer this question, I will just find him to be evasive insofar as this question is concerned. So the question is, he says in paragraph 7: "Furthermore, the SD Doors are branded under the trademarks SD Door with their distinctive logo." That's what he says. So the question is: Is that correct?
Mr Yeo:	Yes.
Court:	It is correct?
Mr Yeo:	Yes.

95 Although Joe says that he typically referred to the SD Door brochures to explain the features and designs to customers,[116] there was no mention made of any such brochures in Mr Seet's investigations report dated 11 August 2023 ("First PI Report").[117] Notably, the WhatsApp messages adduced by Mr Seet show that he had expressly requested Joe to send photographs and videos of the

116 Koh Chin Keong's affidavit filed on 7 February 2025 at para 25.

117 CBOD Vol V at pp 336–362.

Version No 1: 05 Dec 2025 (13:13 hrs)

doors or *brochures*, yet Joe only sent pictures of the doors without any brochures. While Joe claimed at trial to have sent the SD Door brochure to Mr Seet *via* WhatsApp,[118] he adduced no evidence to substantiate this assertion. Indeed, when confronted with the WhatsApp chat records produced by Mr Seet in the First PI Report, Joe conceded that if the brochure was not in the messages retrieved from Mr Seet's WhatsApp, then Mr Seet "did not receive it".[119] There was no reason for Mr Seet, being a professional private investigator, to omit such an important fact when he was hired by Mr Ng to investigate a possible passing off case. While Joe claims that he cannot remember whether Mr Seet identified himself by a specific name, the WhatsApp messages reveal that Joe addressed Mr Seet by his first name "Jeremy".[120] These points were raised by Mr Chua in his closing submissions and I find that they validly call into question the credibility of Joe's testimony. By contrast, I accept the evidence of Mr Seet as his testimony is internally consistent and detailed. The Defendants were selling SD Doors by using an SK Door as a sample (and referring to it as an SK Door), thereby misleading customers to believe that the doors being sold were SK Doors.

96 Further, it is clear that the Defendants have no consistent explanation for the adoption of "SD" for their doors. When questioned about the meaning of "SD", the Defendants' witnesses provided inconsistent testimonies. Mr Koh replied that it meant "slide and swing" but that he was "not involved in the process so [he] was just speculating".[121] The following day, Mr Goh disagreed with Mr Koh's interpretation. He stated instead that "SD Door" was derived

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118 Official transcript (15 May 2025) at p 38, line 23.

119 Official transcript (15 May 2025) at p 38, line 24 to p 39, line 18.

120 Koh Chin Keong's affidavit filed on 7 February 2025 at para 16; Seet Ju Yong Jeremy's affidavit filed on 7 February 2025 at p 53.

121 Official transcript (14 May 2025) at p 34, lines 6–23.

Version No 1: 05 Dec 2025 (13:13 hrs)

from the full company name (*ie*, Supreme Door MY) and that Mr Koh knew what it was supposed to stand for.[122] Mr Goh admitted to being aware that the product codes stated in all of Mr Ng's product brochures and online websites start with the prefix "SD" for the slide-and-swing doors. However, he maintained that it was a "just a coincidence" that he chose "SD" for his company and products.[123]

97 I find it implausible that the usage of "SD" was a mere coincidence. It is undisputed that Mr Goh was Mr Ng's ex-employee. However, there is disagreement over when exactly Mr Goh resigned. Mr Ng places significance on the timing of Mr Goh's resignation because if Mr Goh resigned in May 2021 (as opposed to October 2016), it would mean that he had incorporated Supreme Door MY (see [6] above) while he was still an employee of Mr Ng. Mr Ng initially wrote in his Statement of Claim that Mr Goh "had worked for [Mr Ng's] business in Singapore from 1 December 2010 to 3 October 2016 (i.e. for approximately 6 years)".[124] In their Defence and Counterclaim (Amendment No 1), the Defendants claimed that Mr Goh "had resigned on [*sic*] May 2021".[125] Subsequently in Mr Ng's affidavit filed on 7 February 2025, he adduced Mr Goh's record of employment history from the Ministry of Manpower, confirming that Mr Goh was employed in Singapore until 2016.[126] Mr Ng clarified that thereafter, Mr Goh worked for him at a factory in Malaysia until 2021.[127]

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122 Official transcript (15 May 2025) at p 11, line 17 to p 12, line 5 and p 12, lines 10–13.

123 Official transcript (15 May 2025) at p 14, lines 1–7.

124 SOC at para 19.

125 DCC at para 19.1.

126 Ng Say Keong's affidavit filed on 7 February 2025 at pp 224–225.

127 Ng Say Keong's affidavit filed on 7 February 2025 at paras 41 and 58(c).

Version No 1: 05 Dec 2025 (13:13 hrs)

98 Mr Goh's position is that he stopped working for Mr Ng in 2016 and then continued assisting Mr Ng only as a "subcontractor" at the factory in Malaysia. He even claims to have hired workers under his employment and paid their wages.[128] At trial, Mr Goh was questioned about the difference in his testimony and the Defendants' position on whether he was Mr Ng's employee and when exactly Mr Goh resigned from Mr Ng's business. In response, he alleged that some portions of the Defendants' pleadings were "inaccurate".[129] When probed about the lack of documentary proof of his alleged hiring of employees, his explanation was that the arrangement "took place [a] long time ago" and that he can no longer find such evidence.[130]

99 For the purposes of this inquiry, it is not necessary to determine when exactly Mr Goh stopped working for Mr Ng. Mr Goh admitted in his affidavit that Mr Ng "was not technically inclined" and thus "relied on [Mr Goh's] technical expertise". Mr Goh even proclaimed to have "contributed significantly to the design and success of the SK Door patent".[131] It is therefore evident that from his years of work experience, Mr Goh had significant knowledge of Mr Ng's business. Although the passing off claim mounted by Mr Ng is limited to the Defendants' use of the SK Name, I agree with Mr Chua that a reasonable inference can be drawn that the Defendants, in naming their doors "SD Doors", deliberately intended to refer to S & K Solid Wood Doors' slide-and-swing doors which use the "SD" prefix in their respective product codes.[132] In fact, the parties are aligned that "SD" has been used by S & K Solid Wood Doors in its

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128 Goh Song Guan's affidavit filed on 7 February 2025 at paras 15, 18 and 19.

129 Official transcript (15 May 2025) at p 9, lines 6–9, 20–25.

130 Official transcript (15 May 2025) at p 10, lines 19–27.

131 Goh Song Guan's affidavit filed on 7 February 2025 at para 16.

132 CCS at para 14.

Version No 1: 05 Dec 2025 (13:13 hrs)

business for years even before the incorporation of Supreme Door MY, with the two letters being used to represent the product codes of the slide-and-swing doors in its brochures and websites.

100 To this end, the Defendants submit that there could not have been actionable misrepresentation as there was no reliance or inducement.[133] This is because Mr Seet is a private investigator who attended at the showroom with the specific objective of investigating whether the Defendants were selling SD Doors under the name of SK Doors. They aver that "[m]isrepresentation requires that a statement operate on the mind of the representee" and this element is wholly absent here.[134] This misunderstands the purpose of Mr Seet's evidence in these proceedings. The fact that Mr Seet himself was not confused is irrelevant. Mr Seet's objective was to gather evidence of how the Defendants were conducting their sales pitch for their doors. But for Mr Seet's visit, such evidence would not have been available to Mr Ng. In my view, such evidence is relevant as it is demonstrative of the misrepresentation made by the Defendants. Based on the evidence of Mr Seet, the question is whether a customer who is shown the SK Door and informed that this is an SK Door will believe that the door he is buying is an SK Door such that the act of showing the SK Door but supplying the SD Door amounts to a misrepresentation that will confuse the customer as to the true origin of the SD Door.

101 The Defendants also place emphasis on Mr Ng's failure to produce the Customer and/or Relative for cross-examination and the fact that Mr Ng's original pleaded case was that this incident occurred at the Customer's home

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133 DCS at paras 27–28.

134 DCS at para 30.

Version No 1: 05 Dec 2025 (13:13 hrs)

but he subsequently clarified that it was the Relative's home.[135] The Defendants submit that Mr Ng did not prove that any customer, upon reading the SD Door catalogue, mistakenly purchased an SD Door under the misconception that it was an SK Door.[136] There is no evidence from any member of the public allegedly misled or confused into believing that the Defendants' catalogue or doors were connected with Mr Ng's. The lack of direct evidence means that Mr Ng has failed to discharge his burden of proof.[137]

102 I disagree with the Defendants. Again, their arguments seem to be premised on the misconception that Mr Ng is required to prove the elements of the tort of misrepresentation with respect to each purported incident. The courts have on multiple occasions reiterated that the lack of evidence of actual confusion should not be accorded undue significance (see *Novelty* at [80]). The rationale underlying such an approach was explained in detail by the Court of Appeal in *Hai Tong* at [100]:

> … finding and producing actual evidence of confusion may be difficult as members of the public are generally reluctant to attend proceedings in court. Moreover, those who are confused and deceived may remain so, and there is no reason to think that they would be moved from this state so as to bring their past experience to the attention of the parties. Furthermore, even those members of the public who have come to appreciate that they were misled will frequently have no reason to draw this to the attention of the parties, especially if the realisation comes some time after any relevant dealings with the parties. Finally, persons who discover that they have been deceived and decide not to do business with the offending party as a result may then have no further reason to contact the parties and inform them of their past confusion. For these reasons, while evidence of actual confusion can be very helpful, its absence should not be accorded undue significance …

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135 DCS at paras 7, 8 and 14.

136 DCS at para 35.

137 DCS at paras 38–39.

Version No 1: 05 Dec 2025 (13:13 hrs)

103 In any event, I do not take into account the alleged incident at the Customer and/or Relative's home in coming to my conclusion that there was a likelihood of confusion. Mr Ng explained that the Customer and Relative wanted to remain anonymous and did not want to testify at trial as they "[did] not want to get involved in this case".[138] Regardless of Mr Ng's reasons, this alleged incident is hearsay evidence. The entire narrative is second-hand and untested, with no name ascribed to the Customer and/or Relative. The Defendants also never had the opportunity to cross-examine the Customer and/or Relative. It would thus be prejudicial to the Defendants for me to give any weight to this allegation.

104 For completeness, I also do not consider the Defendants' catalogue to be so similar to S & K Solid Wood Doors' catalogue that it gives rise to a likelihood of confusion. Ms Chan Suit Xin ("Ms Chan"), the general manager of Mr Ng's business, testified that "the look of the Defendants' catalogue for their SD Doors is highly similar to [the] SK Doors catalogue". She also said that the disclaimers at the bottom of the parties' respective catalogues are phrased in a similar manner.[139] In her affidavit, Ms Chan adduced Mr Koh's and Mr Goh's WhatsApp conversation on 13 March 2023, in which Mr Koh asks Mr Goh, "why don't you put a code on top for the board like the SK DOOR samples?"[140] Based on this conversation, the parties appear to have taken inspiration from the S & K Solid Wood Doors catalogues in placing the product code above each board in the SD Door catalogue. However, I agree with the Defendants that the layout, font styles and icons used are generic and do not give force to Mr Ng's case of passing off.

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138 CBOD Vol II at p 38, para 53.

139 Chan Suit Xin's affidavit filed on 7 February 2025 at paras 16–17.

140 Chan Suit Xin's affidavit filed on 7 February 2025 at para 19, TAB H.

Version No 1: 05 Dec 2025 (13:13 hrs)

105 Notwithstanding the above, I am convinced in light of the surrounding circumstances that there is a likelihood of confusion among the relevant public. As a matter of completeness, I ought to state that this likelihood of confusion arises from the *Defendants'* conduct and not just 9 Power's. This is notwithstanding the fact that Joe is an employee of 9 Power and is responsible for managing customer sales at 9 Power's office (which is the same premises from which Jia Le operates).[141] Joe has stated unequivocally that "[t]he employees do not differentiate between [the Defendants]" and they "treat [the Defendants] as a single entity".[142] Moreover, the Measurement Slips / Work Orders were issued by both Jia Le and 9 Power.[143] Apart from differentiating between Jia Le and 9 Power for the purposes of setting out the background facts and clarifying that Jia Le does not import SD Doors (whereas 9 Power does), Mr Chow has consistently made reference to the Defendants jointly. Consequently, representations made by Joe may be regarded as being made on behalf of the Defendants collectively.

Damage

106 The final element to establish passing off is damage. The claimant need not show actual damage as long as a real tangible risk of substantial damage is present and this could also occur by way of blurring or tarnishment (*Singsung* at [41]), referring to *Novelty* at [100] and [105]). In brief, blurring occurs when the claimant's mark or name, instead of being indicative of only the claimant's goods, services or business, also becomes indicative of the defendant's goods, services or business (*Novelty* at [97]). Tarnishment occurs when the business, goods or services of the defendant are of a worse quality than those of the

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141 Koh Chin Keong's affidavit filed on 7 February 2025 at para 3.

142 Koh Chin Keong's affidavit filed on 7 February 2025 at para 5.

143 Chan Suit Xin's affidavit filed on 7 February 2025 at pp 206–208.

Version No 1: 05 Dec 2025 (13:13 hrs)

claimant or have some other undesirable characteristic, resulting in customers thinking that the claimant is now the source of such poor quality or undesirable business, goods or services (*Novelty* at [98]).

107 The fact that the goods are in direct competition with one another is a highly relevant consideration. In *Tong Guan Food Products Pte Ltd v Hoe Huat Hng Foodstuff Pte Ltd* [1991] 1 SLR(R) 903 at [31], the Court of Appeal said:

> … If the goods in question are in direct competition with one another, the court will readily infer the likelihood of damage to the plaintiff's goodwill, not merely through loss of sales but also through loss of the exclusive use of his name or mark in relation to the particular goods or business concerned …

108 Indeed, the Court of Appeal in *Hai Tong* found that given the identical field of business activity giving rise to direct competition, the similarity between the marks as well as the likelihood of confusion, there was a real likelihood of damage (at [118]).

109 Mr Ng says that his goodwill would be "adversely affected through a diversion of custom" (citing *Singsung* at [87]) and there is a real tangible risk of substantial damage since the Defendants provide substitute products within the same market and are in direct competition with him.[144] Ms Chan testified that third-party resellers who previously carried SK Doors have either stopped selling SK Doors entirely or have started to sell SD Doors alongside SK Doors.[145] She substantiates her claim by pointing to the increase in the Defendants' sales to homeowners. Such evidence is not direct documentary evidence of S & K Solid Wood Doors' loss in sales caused by the Defendants. Nonetheless, the absence of direct evidence showing a loss in sales caused by

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144 CCS at paras 27–28.

145 Chan Suit Xin's affidavit filed on 7 February 2025 at para 21 and TAB J.

Version No 1: 05 Dec 2025 (13:13 hrs)

the Defendants is not fatal to the damage element. Mr Ng need not prove that individual sales have in fact been diverted or will be diverted to the Defendants to establish such loss; a *likelihood* of such diversion will suffice (Tan Tee Jim, *Law of Trade Marks and Passing Off in Singapore* (Sweet & Maxwell, 3rd Ed, 2014) at para 19.280). I should make clear that this observation applies only to the damage element of the passing off inquiry.

110 The Defendants submit that Mr Ng did not suffer "any damage or detriment as a result of the transaction". The reason is that Mr Seet paid the quoted price of an SD Door and received an SD Door. The purchase was also "executed purely as a forensic tool for litigation purposes".[146] This misses the point. The costs expended on the trap purchase are not the basis on which Mr Ng is seeking damages for the loss suffered. More fundamentally, the fact that Mr Seet received what he paid for in that particular transaction does not negate the misrepresentation that occurred, nor does it address the likely damage to S & K Solid Wood Doors' goodwill caused by the Defendants' conduct. The trap purchase merely serves as *evidence* of the Defendants' misrepresentation.

111 Given that both parties deal in doors, I am persuaded that the damage element of the passing off inquiry is established.

112 Apart from the above, Mr Ng claims to have suffered damage in the form of "tarnishment" because the SD Doors are of a lower quality than the SK Doors and the association between the Defendants' inferior goods and his superior goods has resulted in harm to S & K Solid Wood Doors' reputation.[147] To substantiate this, Mr Ng adduces a WhatsApp exchange between him and his

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146 DCS at para 29.

147 CCS at para 31.

Version No 1: 05 Dec 2025 (13:13 hrs)

customer who is a contractor. The said contractor forwarded a photograph from a third party (presumably the contractor's own customer) which shows that the installed door has "bubbled". Mr Ng subsequently confirmed that the door was an SD Door and not an SK Door.[148] Mr Ng also reproduces WhatsApp exchanges between the representatives of the Defendants and the representatives of Supreme Door MY. The messages from the Defendants' representatives indicate that their customers have raised concerns over the quality of the SD Doors, including: (a) the rusting of locks; (b) the malfunctioning of the spring-ball mechanism; (c) the inaccurate colour matching of the door panels and (d) the bubbling of the wood grain panels.[149]

113 The authenticity of the WhatsApp messages cannot be verified as the makers of those messages were not called to testify. Hence, I will not take the alleged messages into account. Accordingly, Mr Ng's assertion that he has suffered damage in the form of tarnishment is not established. Regardless, I have found that the damage element is made out (see [111] above).

114 Overall, I find the Defendants liable for passing off.

Conclusion and reliefs

115 In summary, I find that the SK Patent is valid and the Defendants did not infringe the SK Patent. However, the Defendants are liable for passing off.

116 Mr Ng seeks, *inter alia*, the following reliefs:

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148 CBOD Vol III at pp 21 and 42.

149 CBOD Vol III at pp 45, 46 and 52.

Version No 1: 05 Dec 2025 (13:13 hrs)

(a) an injunction to restrain the Defendants, whether by themselves, their directors, officers, servants, agents or any of them or otherwise howsoever from:

(i) passing off by promoting, advertising, marketing, selling, offering for sale, supplying, importing, distributing, installing doors, including slide-and-swing doors by reference to or with the use of the word(s) and/or name(s) "SK", "S&K", "SK Door(s)", "S&K Door(s)", "S & K Solid Wood Doors", not being Mr Ng's doors, as for Mr Ng's doors or as being connected to or associated with Mr Ng, S & K Solid Wood Doors and/or Mr Ng's product(s);

(ii) making any representation that the doors sold by or on behalf of the Defendants are in any way associated with or connected to Mr Ng; and/or

(iii) enabling, assisting, causing, procuring or authorising others to do any of the abovementioned acts;

(b) an order for delivery up or destruction upon oath of all infringing articles or any article in which that product is inextricably comprised and/or articles or any article in which that product is inextricably comprised that the Defendants have passed off as Mr Ng's, in the Defendants' possession, power, custody or control; and

(c) an inquiry as to damages or alternatively at Mr Ng's option, an account of profits made by the Defendants derived from the acts of passing off by the Defendants, and an order for payment of all sums due.

Version No 1: 05 Dec 2025 (13:13 hrs)

117 As the claim was bifurcated by consent and proceeded on liability only, the damages and/or account of profits sought shall be assessed separately. There is no evidence on whether the offending act has been remedied and/or whether the SK Door is presently still installed as the Defendants' office toilet door. Given this state of affairs, I find it appropriate to grant Mr Ng the injunction prayed for as set out in [116(a)].

118 Next, I deal with Mr Ng's prayer for an order for the delivery up or destruction upon oath of the infringing articles (see [116(b)]). The misrepresentation here consists of the Defendants' conduct in showing a genuine SK Door as a sample (and referring to it as an SK Door) and then supplying an SD Door. This is not a case where the Defendants have manufactured or possess products that bear an offending mark similar to Mr Ng's mark. There is therefore no subject matter for such an order to attach to.

Version No 1: 05 Dec 2025 (13:13 hrs)

119 I will hear parties on costs separately.

Dedar Singh Gill
Judge of the High Court

Chua Yung Guang Mitchel, Annie Dai Jingwen and Ng Chee Weng (Gateway Law Corporation) for the claimant;
Chow Weng Weng (Chow Ng Partnership) for the first and second defendants.

Version No 1: 05 Dec 2025 (13:13 hrs)