

## Oticon v. GN Resound - infringement but no PI in Denmark

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This week, the Maritime and Commercial Court in Denmark rendered a decision in a PI-case between Oticon A/S and GN ReSound A/S regarding alleged infringement of a patent as well as a utility model for certain antenna technology.

Oticon's application for interim relief was, however, turned down, on the grounds that Oticon's proprietary rights would not be forfeit if Oticon were referred to pursuing its claim for compensation in proceedings on the merits as a result of the infringement which the court found. Also, the grant of an interlocutory injunction was held by the court as being incompatible with the basic tenet of proportionality, i.e. the balancing of the respective parties' interests in obtaining/avoiding interim relief.

The decision hinges on, inter alia, the fact that Oticon did not itself offer a commercial product with the antenna technology as opposed to GN ReSound which had launched products with such technology in 2011. The first time around, Oticon had not acted on this, and it was only when GN ReSound launched iPhone compatible hearing aids (also containing the antenna technology) that Oticon chose to enforce its rights. From GN ReSound's perspective, the case therefore concerned whether Oticon was in fact trying to eliminate the first mover advantage obtained by GN ReSound having launched its iPhone compatible products before Oticon.

The court also notes that Oticon has failed to concretise the nature and extent of its alleged losses under the current circumstances and this may be seen as a step in the direction of the Maritime and Commercial Court attaching more weight to concrete circumstances in connection with deciding on whether or not to grant interim relief in these cases.