

Denmark: Coloplast A/S obtains preliminary injunction against MBH-International A/S and its Danish distributor OneMed A/S

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On 30 June 2017, the Danish Maritime and Commercial High Court issued a preliminary injunction against **MBH-International A/S** and its Danish distributor, **OneMed A/S**, import, offer for sale and sale of the urinary catheter assembly "**Quofra OneStep**". **Coloplast** had applied for a preliminary injunction against the "**Quofra OneStep**" catheter assembly with reference to its European patents, **DK/EP 2 216 064** and **DK/EP 1 145 729**.

MBH and **OneMed** had defended **Coloplast's** motion for preliminary injunction by arguing invalidity of the asserted patent rights, but this argument was dismissed by the Court, as it had not been 'established' that the patents were invalid. Conversely, **Coloplast** had 'rendered it likely' that the asserted patents were valid.

On infringement the dispute concentrated on whether the "**Quofra OneStep**" catheter assembly fulfilled the features of "the cavity contains a liquid swelling medium for provision of a ready to use catheter assembly" and whether the gas impermeable material, which the "**Quofra OneStep**" package is made of, "comprises aluminium". The Court found that **Coloplast** had 'rendered it likely' that the liquid in the "**Quofra OneStep**" package constitutes "a liquid swelling medium for the provision of a ready to use catheter assembly" and that the "**Quofra OneStep**" packaging material contained a layer of aluminium in sufficient quantities to obtain the purpose of making the package, as a whole, gas impermeable, which was all the patents required on this feature.

Accordingly, **Coloplast** had 'rendered it likely' that the asserted patent rights were valid and infringed, and, thus, an injunction was granted.

As an interesting 'innovation', the operative part of the injunction order contains specific wording, in addition to the traditional ban against offering for sale, importing and selling "**Quofra OneStep**". It also enjoins **MBH** from negotiating, entering into or maintaining any facility under existing agreements, with its distributors, agents or customers in Denmark or abroad, allowing them to continue to source "**Quofra OneStep**", to the extent **MBH's** activities are performed in or from Denmark. Also, **MBH** is ordered to notify its distributors, stockists, agents or customers that they cannot any longer source "**Quofra OneStep**" under the terms of any existing agreements. Further, **MBH** is enjoined from instructing its Turkish manufacturer to undertake supply of "**Quofra OneStep**" products to **MBH's** customers elsewhere, to the extent such instructions are given in or from Denmark.