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The Danish Maritime & Commercial Court issues ruling on the potential bias of judges

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With the Danish patent litigation community being limited in numbers and the pool of legal judges and expert judges available to the Danish specialty patents court being likewise limited in numbers, The Maritime & Commercial High Court (“MCC”) – along with its appellate branches – has long since decided that judges deciding an application for an interlocutory injunction are not prima facie biased in relation to hearing an ensuing action on the merits.

In a pending matter, however, a somewhat different aspect came up when a party applied for an injunction to be lifted (repealed) by MCC – which had also granted the injunction – due to a subsequent decision in a parallel matter in which an application for an interlocutory injunction had been denied by the MCC.

One of the parties to the repeal proceedings argued that two of the judges appointed for the repeal proceedings should be excluded due to potential bias. The MCC held that there was no potential bias:

A legal judge and an expert judge were not considered to be potentially biased in the repeal proceedings, even if the two judges had previously taken part in the very case which led to the grant of the interlocutory injunction and even though they subsequently had taken part in a case in which the court had turned down an application for an interlocutory injunction based on the same supplementary protection certificate.

In that connection, the MCC accorded weight to the fact that a decision to repeal an interlocutory injunction must be based on a concrete assessment of whether the conditions for granting an interlocutory injunction no longer apply, and that both case law and factual circumstances to a great extent may change on a current basis, especially in matters such as these pertaining to interlocutory injunction circumstances which render the judges free to rule again and reach different conclusions regardless of any previous decisions reached by such judges.

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