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Power Stow vs. RASN, SAS and John Bean (Decision rendered 21 May 2010 – Denmark)

Anders Valentin (Bugge Valentin) · Friday, June 25th, 2010

The plaintiff, Power Stow A/S ("Power Stow"), held a national patent for a ramp for transporting luggage onto aircrafts. During prosecution of the patent-in-suit, the Danish PTO had initially declined to grant the patent for lack of inventive step over a US patent. A revised patent application was subsequently accepted in February 1996.

Later RASN A/S ("RASN") designed another ramp ("Snake Ramp") on the basis of which a utility model was granted in March 2006. Snake Ramp was produced and marketed by John Bean Technology Corporation ("John Bean") and used by the Scandinavian airline SAS.

Based on the patent-in-suit, Power Stow filed an infringement at the Maritime and Commercial Court against RASN, SAS and John Bean. Power Stow argued that the patent claims had to be interpreted in a general and "realistic" manner under the doctrine of equivalents rather than in a strict literal sense. Furthermore, Power Stow argued that Snake Ramp made use of most of the features set out in Power Stows patent.

The defendants argued that patent protection should only be obtainable for inventions reflecting a sufficient degree of technical innovation and that consequently, the protective scope of the patent-in-suit must be distinguishable from relevant prior art, not least the US patent already considered by the Danish PTO during prosecution.

The defendant's also took the position that the doctrine of equivalence was not applicable in the present circumstances as the invention at the basis of the patent-in-suit was not a pioneer invention and so patent claims must be construed narrowly.

Also, RASN argued that it had only granted John Bean a licence, which in itself could not constitute an act of patent infringement and John Bean argued that the production and marketing of Snake Ramp had only taken part outside Denmark. At the request of the parties to the proceedings, the court appointed experts to respond on a number of factual issues.

First of all, the court ruled that the claims of the patent-in-suit must be read in light of the prosecution file of the application that led to the patent-in-suit. The patent-in-suit was granted after comprehensive communications with the Danish PTO which in the opinion of the court must entail that the claim language is precise and clearly distinguished from the prior art. Against the background, the court found that the claims must be construed narrowly and that as a result the

protective scope conferred on the patentee could only comprise that which was not already known in the prior art.

Having compared the Snake Ramp with the claims, the court ruled that although some similarities did exist, such similarities merely reflected the prior art and could not be comprised by the protective scope of the patent-in-suit.

Finally, the court found that there was no evidence that either RASN or John Bean had committed any infringing actions inside Denmark. There was therefore no jurisdiction for proceedings against John Bean, and the case against John Bean was consequently dismissed.

Having found in favour of the defendants, Power Stow was ordered to pay all costs. It is not clear whether the decision has been appealed.

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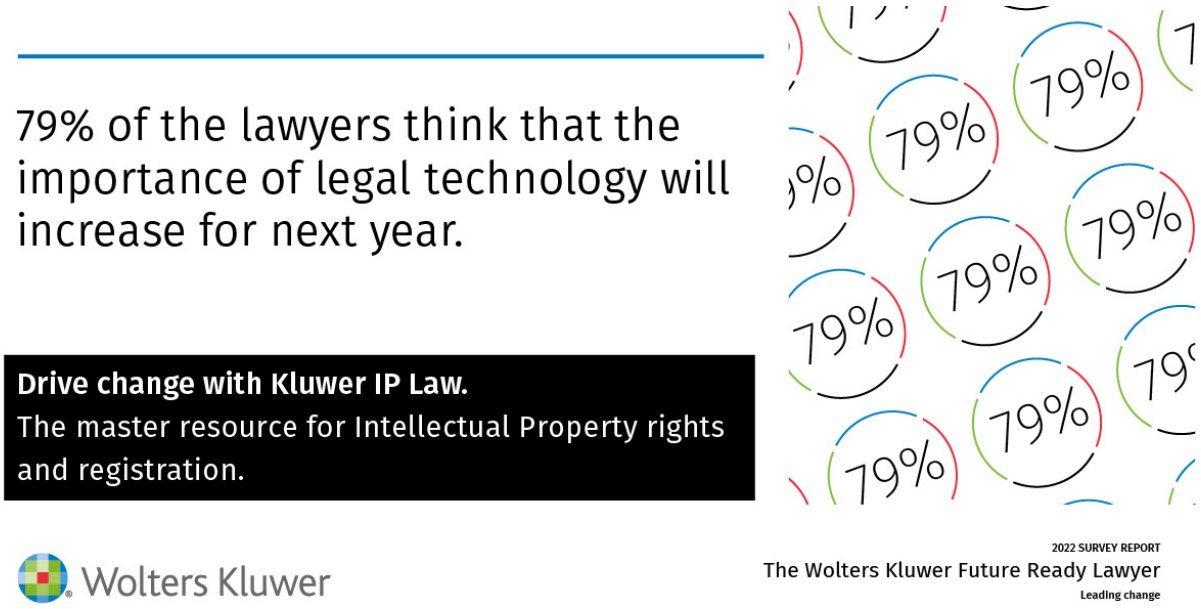

This entry was posted on Friday, June 25th, 2010 at 5:38 pm and is filed under Denmark
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