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# Kluwer Patent Blog

## Denmark: Linco Food Systems v Meyn Food Processing Technology

Anders Valentin (Bugge Valentin) · Friday, August 27th, 2010

In this case the patentee (Meyn) was granted a patent (EP 0 530 868) on a device to clean out the intestines of poultry during slaughtering. The enforcement court in Denmark granted an injunction based on the patent-in-suit against a Danish company (Linco) which manufactured a similar device. The injunction was upheld on appeal. In the confirmatory action the High Court ruled in favor of the patentee, prohibiting the Danish company from producing and selling the device and dismissing Linco's defence of invalidity of the patent-in-suit. The High Court's decision was based on court-appointed experts' testimony.

On appeal, Linco submitted a citation (Exhibit AT – a 1957 US patent) that had not been a part of the High Court proceedings. This led to the patentee filing an application for a limitation on the original patent application's first claim pursuant to Article 105a of the European Patent Convention.

The parties agreed that the patent-in-suit as limited was novel over the new citation. The court-appointed experts were of the opinion that the closest prior art in relation to the patent-in-suit as limited (Exhibit F3) had two features possessed all relevant features of the patent-in-suit as limited and based on the oral testimony of the court-appointed experts, the Supreme Court found that both of those two features absent from Exhibit F3 were in fact present in a third citation (Exhibit BH) and the patent-in-suit as limited lacked inventive step in light of the combination of Exhibits F3 and BT and was consequently invalid (cf. the Danish Patents Act § 52 (1)(1) combined with § 2 (1) as well as article 138 (1)(a) of the EPC).

Thus the Supreme Court overturned the High Court's decision.

*Linco Food Systems v Meyn Food Processing Technology B.V., Supreme Court, Copenhagen, Denmark, 3 December 2009, Docket No. 313/2005*

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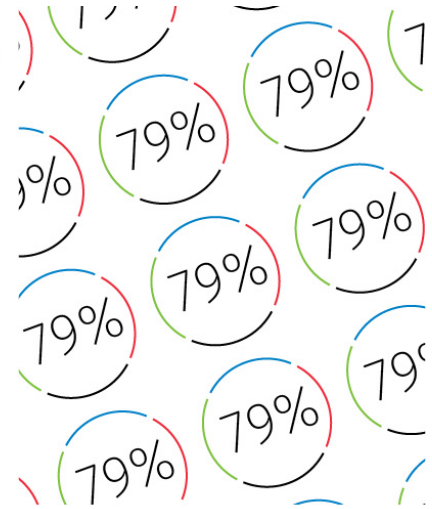
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