
Kluwer Patent Blog

Toothpick patent invalidated

Anders Valentin (Bugge Valentin) · Friday, June 24th, 2011

In a recent decision rendered by the Danish Supreme Court, the Court was asked to consider infringement of a patent granted for a plastic tooth pick.

Several defences were raised by the alleged infringer, among them that in 1994 the Danish Patents Office, upon request, had issued an opinion stating under which conditions a plastic tooth pick – in the opinion of the Danish Patents Office – should not be considered to infringe upon the patent-in-suit.

Thus, it was held by the alleged infringer that he should be able to rely on the opinion rendered by the Danish Patents Office in this regard also in this case where the patent-in-suit was enforced through legal action and moreover, that the statement of the Danish Patents Office should only be challengeable if the patentee filed suit against the Danish Patents Office.

Also, the issue was raised that the patent holder was not in fact entitled to the patent-in-suit as it had not been transferred with binding effect to the patent holder by the original patentee.

The Supreme Court clearly and unambiguously turned down the non-infringement defence based on the Danish Patents Office office (and it should be noticed that this former practice of the Danish patents Office to issue opinions regarding infringement has long since been abandoned) as the courts are free to adjudicate the facts of a court case and when doing so must take into account all evidence submitted to it.

Finally, the Supreme Court held that the patent holder was in fact the proper rights holder referring inter alia (as circumstantial evidence) to the registration in the Danish Patents Office registry even though no decisive formal weight can be attached to such recordings.

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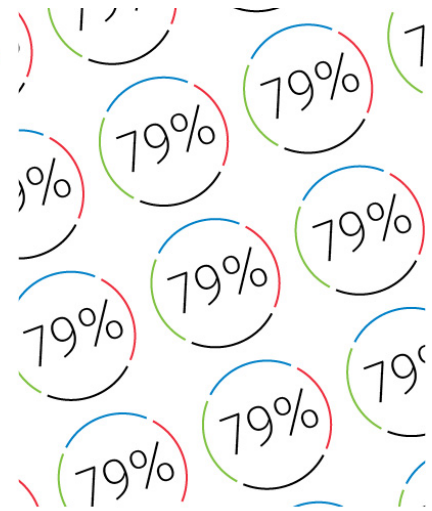
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