

Kluwer Patent Blog

Is the Danish enforcement regimen finally to be reformed?

Anders Valentin (Bugge Valentin) · Tuesday, May 8th, 2012

For many years in Denmark, interlocutory injunction proceedings have been organized under the aegis of the bailiff's department of the municipal courts. This has entailed a number of disadvantages, not least in relation to patent cases. In most other countries it is considered a necessary pre-requisite that the presiding judge in such proceedings has experience with patent litigation but also, preferably, at least a general understanding of the technical field – be it mechanical, chemical or other – relevant to the litigation in question. For many years the practice in Denmark has been a source of great discontent on the part of all parties involved in patent litigation in Denmark.

Against this background the Danish Judicial Council has drafted and now submitted to the Danish Justice Department a report suggesting a number of changes and modernizations of the judicial framework regulating interlocutory injunction proceedings in Denmark.

Some of the most significant changes suggested by the Judicial Council are:

- Transferral of the competence to grant interlocutory injunctions from the bailiff's court to the civil court department of the municipal courts, thus ensuring (at least in theory) that to a greater extent, the bench will be more experienced (though not necessarily in patent litigation).
- The Maritime and Commercial Court, which today serves as specialty court regarding intellectual property rights is to be given the competence to hear interlocutory injunction proceedings in, inter alia, cases concerning patents.
- The establishment of a system whereby interlocutory injunction proceedings are heard by several judges (as opposed to one) while at the same time giving the courts the possibility of appointing temporary expert judges to join the bench in the adjudication of e.g. a patent case.

And perhaps most controversially, the Judicial Council has suggested the abolition of confirmatory actions except as regards the validity of the enforced right.

The system today is built on an assumption that a patent once granted is valid (until irrevocably revoked). In practice, a defence based on lack of inventive step of the patent-in-suit is never accorded any weight as the presiding judge in interlocutory injunction proceedings regarding patents is not an expert judge and therefore unfit to question validity (and thus enforceability) except in cases involving a clear novelty-destroying citation. By the same token, the bailiff's cannot invalidate a patent, but only turn down an application for interlocutory injunction on the

grounds that it is considered unlikely that the patent will be upheld as valid.

Today, if an application for an interlocutory injunction is granted, the patentee must subsequently file a confirmatory action (during which the court may appoint expert judges as well as expert witnesses of its own) and ultimately invalidate the patent-in-suit whether due to lack of novelty or lack of inventive step.

The Judicial Council in its report now suggests that in future the confirmatory action shall only determine whether or not the patent-in-suit is valid (and thus enforceable), the reason being that if the competence to grant injunctions is moved from the bailiff's court to the civil court department, there is no reason for the (in the eyes of the Judicial Council more competent) civil court department to revisit its decision to grant an injunction. Instead, the decision to grant an injunction may be appealed to the Maritime and Commercial Court.

The report has only just been made available for comments by any interested parties and, no doubt, its suggestions will be subject to extensive discussions which we will be following the outcome of.

To make sure you do not miss out on regular updates from the Kluwer Patent Blog, please [subscribe here](#).

Kluwer IP Law

The **2022 Future Ready Lawyer survey** showed that 79% of lawyers think that the importance of legal technology will increase for next year. With Kluwer IP Law you can navigate the increasingly global practice of IP law with specialized, local and cross-border information and tools from every preferred location. Are you, as an IP professional, ready for the future?

Learn how **Kluwer IP Law** can support you.

79% of the lawyers think that the importance of legal technology will increase for next year.

Drive change with Kluwer IP Law.

The master resource for Intellectual Property rights and registration.



2022 SURVEY REPORT
The Wolters Kluwer Future Ready Lawyer
Leading change

This entry was posted on Tuesday, May 8th, 2012 at 9:56 pm and is filed under [Denmark](#), [Injunction](#), [Procedure](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. Both comments and pings are currently closed.