

Kluwer Patent Blog

Information cannot constitute a patentable, technical feature – a recent Danish decision on waste paper bags

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In a recent decision by the Danish Maritime and Commercial Court, the issue was whether a technical feature may consist in information attached to an object if such information increases the usability of the object.

The case T-66-07, Svenco Papperssäcker AB v. Segezha Packaging A/S, Svenco had filed suit claiming infringement of its Danish patent DK 175 996D1 claiming that Segezha had infringed this patent by marketing wastepaper bags with an inside line marking the maximum content of the wastepaper bag.

Segezha, on the other hand, entered a plea of invalidity of the patent-in-suit.

Against this background, the parties requested that the court-appointed experts of its own – as is usual in Danish patent cases on the merits – and these experts were then asked a number of questions in order to shed further light on the knowledge of the skilled person etc.

The patent-in-suit concerned a wastepaper bag which at the open end would be marked with information indicating the upper allowable limit of waste to be held in the bag.

The court-appointed experts stated that it was known from the prior art (EP 159 309) that such bags may bear publicity printing which only becomes visible during the use of the bag or when the bag is coupled to the bin or collecting container, i.e. that the information is printed so that it can be read on the inside of the bag rather than on the outside.

The court-appointed experts stated that the information in the form of an indication of the maximum level of filling in the patent-in-suit will only become usable when a user reads and understands the information/instruction and uses the bag in accordance therewith.

This, according to the court-appointed experts, meant that based on the case law of the EPO (eg. T-553/02) such information cannot be regarded as a technical feature and therefore not a distinguishing feature in terms of patentability.

Interestingly, the court was divided on this issue. Two of the court's members found that taking into account the skilled person's knowledge and experience in connection with the overfilling of wastepaper bags as well as the presence of new closed bag containers in the market (rendering the external filling line invisible), a new need arose to address the issue of avoiding overfilling

wastepaper bags. Furthermore, these two members of the court held that taking into account the prior solution to this problem, it was obvious to the skilled person to attach a marking line on the inside of the bag and therefore the invention lacked inventive step.

One member of the court dissented on the following basis: The patent-in-suit states as possible causes of the problem with overfilled wastepaper bags that the externally attached filling line is not visible either because it is hidden by that part of the bag which has been folded over or because it has been put inside a closed container. The realisation of this problem is not known from other sources and although it may seem trivial, it must be seen as at least contributing in part to creating inventive step. This, the dissenting judge held, was underlined by the fact that several decades and many millions of overfilled wastepaper bags have not, apparently, given rise to any skilled person arriving at the thought of inventing an inside marking on the wastepaper bag and solving the problem of overfilled bags in that way.

As two out of the three judges held that the invention according to the patent-in-suit lacked inventive step, the patent was invalidated.

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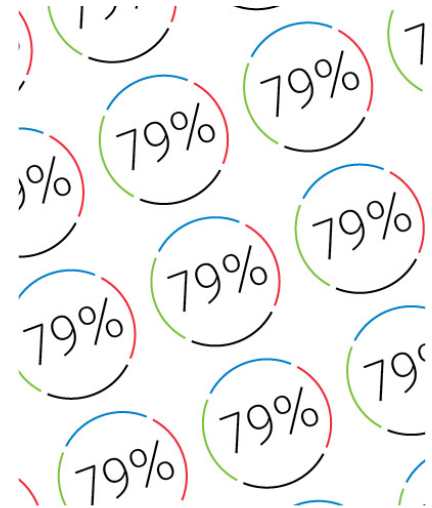
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