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Danish supreme court applies the doctrine of equivalents and acknowledges estoppel

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In 1984 Albert Hedegaard submitted a national patent application to the Danish Patent Office concerning an air-assisted device for spraying crops with pesticides.

Hardi International A/S filed an opposition against the patent application with the Danish Patent Office. When finally granted in 1996, the patent had been substantially limited and the claims had been amended several times as a consequence of opposition proceedings at the Danish Patent Office as well as the Danish Board of Appeal.

After an administrative appeal of the decision to grant had been heard and the patent had been upheld, Hedegaard filed an infringement action against Hardi in 1999. Hardi in turn filed a counter-claim of invalidity.

In 2001, the Danish High Court issued a decision-in-part whereby the patent was upheld and in January 2012 the High Court finally ruled – having accepted several rounds of court-appointed expert Q&As – that the patent-in-suit had not been infringed. Inter alia, the High Court found that there was neither literal infringement nor infringement by equivalent means and that Hardi's products were based on prior art citations to which the patentee during prosecution had pointed as citations non-detrimental to novelty and inventive step.

On appeal, the Supreme Court stated that if patent claims contain ambiguities, it may be accorded weight in the construction of their protective scope that the patentee himself has argued that certain expressions should be construed in a limiting fashion in order to convince the examiner of novelty and inventive step over certain prior art (which Hardi argued the patentee had done).

The Supreme Court upheld the High Court's judgement and added that (based on additional court-appointed expert Q&A before the Supreme Court) that it must be taken into account that Hardi's embodiment reflected solutions known in the prior art and that, moreover, Hardi's embodiment did not contain those features which (in the opinion of the court-appointed experts) constituted the essential and novel aspects of the invention of the patent-in-suit.

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This entry was posted on Tuesday, December 17th, 2013 at 10:53 pm and is filed under Denmark, literally fulfil all features of the claim. The purpose of the doctrine is to prevent an infringer from stealing the benefit of an invention by changing minor or insubstantial details while retaining the same functionality. Internationally, the criteria for determining equivalents vary. For example, German courts apply a three-step test known as Schneidmesser's questions. In the UK, the equivalence doctrine was most recently discussed in Eli Lilly v Actavis UK in July 2017. In the US, the function-way-result test is used.">Equivalents
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