

Kluwer Patent Blog

GN Resound vs Oticon – Danish High Court overturns decision not to grant PI

Anders Valentin (Bugge Valentin) · Friday, September 4th, 2015

In a recent decision, the Danish appeals court (High Court) overturned the first instance decision not to grant an application for an interlocutory injunction.

The case concerned whether or not the manufacture and sale of a number of hearing aids by GN ReSound A/S constituted an infringement of Danish patent No. DK/EP 2 076 065 and Danish utility model No. DK 2013 00096 Y6 belonging to Oticon A/S, and whether the conditions for granting interim injunction after the Danish Administration of Justice Act were fulfilled.

Oticon is the holder of a Danish patent for a hearing device and method for a wireless receiving and/or sending data and the holder of a Danish utility model for a hearing aid for a wireless receiving and/or sending data.

GN Resound had sold similar hearing devices, for which reason Oticon had filed an infringement action based on the patent and the utility model. GN Resound mainly argued that the three conditions for granting interim injunction were not fulfilled. Pursuant to section 413 of the Danish Administration of Justice Act an injunction can only be granted if the party present evidence or proves on a balance of probabilities 1) that the party has the right which is sought protected by the injunction, 2) that the conduct of the opposite party necessitates the granting of the injunction and 3) that the opportunities for the party to obtain its right would be forfeit if the party had to await the judicial decision of the dispute.

The Maritime and Commercial Court found in the first instance that Oticon on a balance of probabilities had proved that the patent and the utility model were valid, primarily because of the fact that EPO and the Danish Patent and Trademark Office had made administrative examinations of the patent, respectively the utility model, and concluded that the conditions for registration were fulfilled. Accordingly, there was a presumption that both the patent and the utility model were valid. On those grounds Oticon had proved to have the rights which were sought protected by the interim injunction, cf., § 413, no. 1.

In relation to four of the products by GN Resound, the court found that Oticon had proved that GN Resound was infringing Oticons's rights under the patent and the utility model and that the behavior of GN Resound therefore necessitated the granting of an interim injunction. Accordingly, the second condition was fulfilled in relation these products, cf., § 423, no. 2. This condition was, however, not fulfilled in relation to another three of GN Resound's products due to the fact that

these products were not being sold in Denmark.

Regarding the third and final condition, The Maritime and Commercial Court did not find that Oticon had proved that the opportunity to obtain the rights would be forfeit if Oticon had to await the legal decision on the merits. The court placed emphasis on the fact that it is stated in the preliminary work for the Danish Administration of Justice Act that an interim injunction usually is subordinate to the usual court procedure and that the interim remedies only should be used to prevent loss of rights of the claimant for awaiting a legal decision. However, the preliminary work also stated that the opportunity to grant injunction for certain types of cases under certain circumstances could be the primary securing against infringements, for example infringements of IP rights.

Furthermore, the court found that the granting of an interim injunction would involve substantial prejudices for GN Resound. GN Resound would have to stop selling a number of its products for a long period and, consequently, GN Resound would suffer a great loss of lost sales and goodwill. On these grounds the court found that the granting of an interim injunction would be disproportional to Oticon's current interest in the injunction, cf., section 414 (2) of the Danish Administration of Justice Act.

The court's conclusion was that the conditions for granting interim relief were not fulfilled despite the fact that Oticon had proved that its rights were valid and infringed by Resound.

The decision was appealed to the High Court. As the court in the first instance, the High Court also found that both the patent and the utility model possessed novelty and inventive step and that the conditions pursuant to § 413, no. 1, were met. According to the court, Oticon had proved that GN Resound was infringing its rights under the patent and the utility model and that the behavior of GN Resound necessitated the granting of an interim injunction in relation to four of the products, cf., § 413, no. 2.

Concerning the third condition, the High Court attached great importance to the preliminary work of the Act and stated that section 413 was to be applied and interpreted in the light of the fact that the granting of an interim injunction could – and often would – be the primary means in relation to infringement actions. The court then found that there was a presumption that Oticon would suffer a loss of rights if an interim injunction could not be granted because of the fact that Oticon was in direct competition with GN Resound in the market for hearing aids.

Furthermore, the court found that the general rules regarding damages etc. did not constitute sufficient protection under these circumstances.

In conclusion, the High Court of Western Denmark reversed the decision made by The Maritime and Commercial Court and ruled in favour of Oticon.

Reported by Cecilie Frost Adamsen

To make sure you do not miss out on regular updates from the Kluwer Patent Blog, please

subscribe here.

Kluwer IP Law

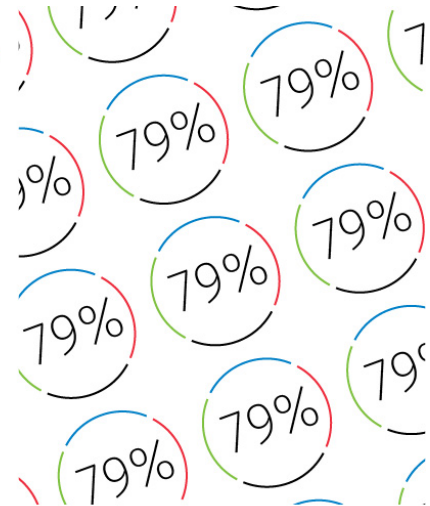
The **2022 Future Ready Lawyer survey** showed that 79% of lawyers think that the importance of legal technology will increase for next year. With Kluwer IP Law you can navigate the increasingly global practice of IP law with specialized, local and cross-border information and tools from every preferred 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 Friday, September 4th, 2015 at 7:30 am and is filed under [\(Indirect\) infringement, Denmark](#)

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