

# Kluwer Patent Blog

## Another decision in the ongoing fur-technology strifes in Denmark

Anders Valentin (Bugge Valentin) · Monday, May 2nd, 2016

In its decision of 28 January 2016, the Danish Maritime and Commercial Court rendered judgement in a matter between Minkpapir A/S and Jasopels A/S. The main question was whether the conditions for granting an interim injunction pursuant to chapter 40 of the Danish Administration of Justice Act were met and in this regard whether Jasopels' stretching machine T5 Maxi Stretch (T5) constituted an infringement of Minkpapir's rights pursuant to patents DK 177012 B1 and DK/EP 1678331 T3. The patents were granted for a method and a machine for the execution of the method for non-destructive stretching and fastening of a pelt on a pelt board and characterized by gripping elements engaging and fastening along the whole lower periphery of the pelt by means of fixing bags.

Pursuant to section 413 of the Danish Administration of Justice Act, an injunction may only be granted if three cumulative conditions are met: The party must present evidence or prove 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 grant of the injunction and 3) that the opportunities for the party to obtain its right would be forfeit if the party had to await a full judicial review of the dispute.

As regards the first condition, Minkpapir referred to the issued patents as a proof of possessing the right, which was sought protected. On the other hand, Jasopels claimed that Minkpapir did not have a valid patent. According to Jasopels, another of Minkpapir's stretching machines was detrimental to the novelty and that before the priority date it was known to grip the lower part of the pelt to the same extent as in T5.

The Maritime and Commercial Court held that the patents-in-suit were granted by the Danish Patent Office and the European Patent Office after reviewing that the conditions for registration were met and, accordingly, there was a presumption that the patents were valid. The Court found no grounds to rule that the decisions by the authorities were incorrect and so Court found it rendered probable that Minkpapir had the right, which was sought protected, cf. section 413, no. 1, of the Danish Administration of Justice Act.

Concerning the second condition, Minkpapir claimed primarily that the T5 constituted a direct patent infringement, in the alternative that it constituted an indirect infringement and more alternatively that it constituted an infringement pursuant to the doctrine of equivalents. The T5 could be used in a way that infringed the patents, and the continuous sale therefore necessitated the

grant of an injunction against future sales. Minkpapier further argued that several costumers had both parties' products in service and that this documented the possibility that the T5 could be used with fixing bags, even though the T5 did not use such bags. Jasopels pleaded that the T5 did not constitute an infringement – whether directly, indirectly or pursuant to the doctrine of equivalents.

The Court attached importance to the patent specifications stating that the essential part of the patents was the gripping elements engaging along the whole of the lower periphery of the pelt, as this caused an even distribution of the counter-hold force and thus a uniform stretch under the stretching of the pelt. T5, on the other hand, had arched gripping elements that – depending on whether stretching a male or a bitch pelt – squeezed around 78 % respectively 56 % of the periphery of the pelt.

When comparing the patent specification and the measured numbers and when having regard to a statement by a European patent agent and his sworn statement in court, the Court did not find that Minkpapier had rendered probable that the gripping elements of T5 engaged along the whole of the external periphery of the pelt.

After a demonstration in court of T5, the Court did not find that it had been rendered probable that T5 was suitable for executing the method as stated in patent claim 1. Finally, having regard to the fact that T5 had been marketed since the spring of 2011, the Court found that Minkpapier must or ought to have known about T5. Accordingly, the Maritime and Commercial Court did not find it rendered probable that Jasopels' sale of T5 constituted an infringement of Minkpapier's right to the patents, as to why it was not rendered probable that the behavior of Jasopels necessitated the granting of an injunction, cf. section 413, no. 2, of the Danish Administration of Justice Act.

Reported by Cecilie Frost Adamsen

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