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Novelty and inventive step – when is a mop cover a mop cover…

Anders Valentin (Bugge Valentin) · Monday, August 21st, 2017

Earlier this year, the Danish Maritime and Commercial Court rendered judgment in a patent case between Carl Freudenberg and Stadsing (SH2017.T-14-14S). Carl Freudenberg was the holder of a patent for a mop cover for a cleaning device (DK/EP 1 704 808). Stadsing conceded infringement if the patent-in-suit were held to be valid.

Carl Freudenberg argued that there was a presumption for the validity of the patent-in-suit, since EPO had found the requirements of novelty and inventive step to be met. In its examination of the patent application, EPO had considered all cited references that had been submitted in this case. Thus, the EPO had already determined that the requirements of novelty and inventive step were met, it was argued.

However, Stadsing claimed that the patent neither met the requirement of novelty nor inventive step. Stadsing submitted three new citations and argued that the EPO had not taken all of these into account in its consideration of patentability. EPO's examination was therefore made on an incomplete basis. Stadsing further argued that according to the court-appointed expert, all of the characteristics of the patent-in-suit were found in a prior art Japanese patent application, which was one of the newly submitted citations. Accordingly, it was argued, the requirement of novelty was not met.

Carl Freudenberg in turn argued that the invention was novel, since the Japanese patent application – according to the court-appointed expert – was used for another cleaning purpose than the mop cover. Therefore, none of the citations could be held as disclosing all of the characteristics of the patent-in-suit.

Basing itself on the expert opinion, the court found that the Japanese patent application concerned a cover for a cleaning device for dusting, and that the Japanese patent application therefore was not fit for a mop cover. Thus, the feature 'mop cover for a cleaning device' in the patent-in-suit was not disclosed in the Japanese patent application. The requirement of novelty was therefore met.

According to Stadsing, the patent-in-suit also lacked inventive step, since the invention was a combination of a known mop cover and a known cleaning device. Moreover, the differences between the mop cover and the prior art were so trivial and minor that a skilled person without further consideration would implement them. Thus, the invention was argued to be obvious to a person skilled in the art.

Stadsing further argued that the EPO, the court-appointed expert and Carl Freudenberg had all adopted different documents as the closest prior art, and in case it is not possible to determine what document represents the closest prior art, the problem and solution approach has to be used in relation to all of the relevant documents.

Carl Freudenberg contested this and argued that only one citation could be considered as the closest prior art. Carl Freudenberg pointed to an American patent indicating a mop cover for floor washing – i.e. a mop cover of the same type as the mop cover described in the patent in suit – arguing that it should be considered the closest prior art. This position was supported in the report given by the court-appointed expert.

The court adopted the problem-and-solution approach. The court thus found – in line with Carl Freudenberg and the court-appointed expert – the American patent to be the closest prior art.

The court held that the objective technical problem to be solved by the invention was therefore to provide alternative methods to clamp the mop cover to the cleaning device in such a way that it could not become separated. In the court's opinion, the solution to this problem offered by the patent-in-suit was not obvious to a person skilled in the art. Consequently, the invention was considered to possess inventive step.

All in all, the invention was novel and involved an inventive step, and the patent-in-suit was therefore upheld as valid and as infringement was not contested, if the patent-in-suit were held to be valid, the court found in favour of Carl Freudenberg.

Reported by Cecilie Frost Adamsen

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