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The Danish Maritime and Commercial High Court dismisses claim regarding preliminary injunction with extraterritorial effect

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On 20 December 2019, The Danish Maritime and Commercial court ruled in a preliminary injunction case regarding a patented rat barrier. The plaintiff claimed that the defendant should be prohibited from producing, marketing and selling products in numerous European countries.

The case concerned whether the patentee, Nordisk Innovation ApS, could obtain a preliminary injunction preventing the defendant, Sewatech ApS, from producing, marketing and selling its allegedly infringing rat barriers. Nordisk Innovation based its claims on patent DK/EP 2 113 615 T3 concerning a two-way barrier for preventing rats or other vermin from entering a sewage pipe system.

In its second claim, Nordisk Innovation, stated that Sewatech should be prohibited from producing, marketing and selling the concerned rat barriers in numerous European countries, including Denmark, ie. Austria, Belgium, France, Germany, Ireland, Holland, Sweden, Switzerland and Great Britain. However, Nordisk Innovation's attempt to obtain interim relief outside of Denmark was turned down by the Court.

The Danish Maritime and Commercial High Court's reasons

The Court asserted that it had competence to adjudicate Nordisk Innovation's claims under the Danish procedural rules and then analysed Nordisk Innovation's second claim regarding extraterritorial effect of the preliminary injunction:

The Court found that Nordisk Innovation had failed to document that Danish courts have authority to decide on questions regarding extraterritorial effect for preliminary injunctions, holding that chapter 40 of The Danish Administration of Justice Act, which concerns the rules about preliminary injunctions, only applies to injunctions with effect in Denmark.

The Court also found that Nordisk Innovation failed to prove that relevant authorities in the relevant European jurisdictions would acknowledge and enforce a preliminary injunction in accordance with Nordisk Innovation's second claim. Also, as for the wording of the claim, the Court ruled that it referred to a Danish right and that Nordisk Innovation has been unsuccessful in proving that it had sufficient interest in obtaining a preliminary injunction with extraterritorial effect.

On those grounds, the Court dismissed Nordisk Innovation's second claim. However, the Court found that Nordisk Innovation has rendered it probable (if not proven) that Sewatech's rat barriers infringed the patent-in-suit and granted the application for preliminary injunction with effect in Denmark.

With its decision, the Maritime and Commercial High Court has not excluded the possibility of obtaining a preliminary injunction with extraterritorial effect, but the decision shows that there strict criteria must be met in order to obtain a preliminary injunction with extraterritorial effect.

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