

**The Danish Maritime and Commercial Court's grounds and findings:**

Both the Danish Board of Appeal for Patents and Trademarks and the experts appointed in the case have found that the differences between the text of the original patent application of 23 June 2005 (PA 200500920) and the finally approved patent DK 176350 B2, including the wording of the actual patent claims, do not go beyond the content of the original patent application. This also applies to the fact that the final patent claims do not use the terminology 'concentric rings' but rather 'cylindrical valve elements'. In their reports and supplementary statements in court, the experts have elaborated on their views and explanations with respect to this issue in particular, also in answer to direct questions from the Court, including the expert members.

Against this background, there is no basis for overriding the professional assessment made by the Appeals Board, see U 2008.2554H, which has been confirmed by the experts in the case.

Similarly, despite the new cited references, US 2,936,152, presented by FlowCon International A/S, the Court does not find that there is a basis for overriding the Board of Appeal's assessment that the invention in the granted patent DK 176350 B2 is new in relation to the closest known technology. In accordance with the experts' answers to questions N, PK29 and PK69, the Court particularly finds that element 55 in US 2,936,152 does not constitute a cylindrical valve element in the sense of the disputed patent.

The Court also finds that the patent differs significantly from what was known at the time of submitting the patent application. In this connection, the Court attaches importance to the experts' answers to question AH which the Court understands to mean that a skilled professional would not find it necessary to replace element 55 in US 2,936,152 with a cylindrical valve element in the sense of the disputed patent.

Finally, the Court finds that the invention is so clearly described in the granted patent that it provides sufficient basis for a skilled professional to exercise the invention.

In conclusion, the Court thus finds that the patent granted by the Board of Appeal, DK 176350 B2, must be maintained in its entirety. In consequence of this, judgment must be entered in favour of Frese A/S and the Appeals Board with respect to the claim by FlowCon International A/S that the disputed patent is invalid.

With respect to the claim that the restraining injunction issued by the Court in Næstved should be upheld, the Court finds that the scope of protection of the finally granted patent which has been maintained in its final form as stated above is fully contained by the scope of protection of the originally issued patent so that the requisite legal basis existed for the granted injunction.

The injunction is consequently upheld.

With respect to the claims made by Frese A/S that FlowCon International A/S in Denmark should be prohibited from manufacturing, arranging for the manufacturing, importing and marketing or selling, including exporting, the FlowCon SME valve, the Court finds that the FlowCon SME valve produced by FlowCon International A/S – illustrated both by the exhibits in the case and presented to the Court – both in its mode of operation and design constitutes an infringement of the granted patent (DK 176350 B2).

Notwithstanding the fact that the granted patent comprises both the outer valve housing and the inner valve elements in the displaceable valve part (the 'inner valve housings'), the FlowCon SME valve, which does not include an outer valve housing, is found to be directly comparable with the patented valve as the FlowCon SME valve can only be used if installed in an outer valve housing. It is the assessment of the expert judges that this will be clear to a skilled professional when comparing the FlowCon SME valve and the disputed patent with the requisite will to understand the patent.

The skilled professional will thus also realise that the wording of patent claim 1 does not exclude an arrangement for maintaining a constant differential pressure,  $p_1 - p_2$ , such as is the case with the FlowCon SME valve, cf. the experts' answer to question BJ. The professional judges agree with this assessment.

The Court consequently finds that the FlowCon SME valve only differs from the wording of patent claim 1 in relation to the extent of the recesses of  $135^\circ$  in the circumferential direction of the cylindrical valve elements. According to the patent claim, the corresponding recess is approximately  $180^\circ$ . However, this deviation is insignificant in the Court's opinion, and the expert judges also assess that it is nearly the same for a skilled professional. All of the Court's members consequently find that the FlowCon SME valve falls under the patent's scope of protection as it is technically similar – equivalent – to the regulator valve as defined in patent claim 1.

The final claim of Frese A/S to the effect that FlowCon International A/S should be banned from manufacturing, arranging for the manufacturing, importing and marketing or selling, including exporting, the FlowCon SME valve, should thus be sustained.

During the proceedings, FlowCon International A/S is not found to have documented that they have made such substantial measures for the commercial exploitation of the invention in this country as to constitute a basis for establishing that they have acquired a right to continue use begun before the priority date in pursuance of Section 4(1) of the Danish Patents Act.

With respect to legal costs, the Court finds that based on the case outcome, value, scope and process, including that the costs should also cover the injunction proceedings at the Court in Næstved, FlowCon International A/S shall pay DKK 140,000 to Frese A/S towards covering attorney's fees and expenses and an amount towards covering all court fees paid by Frese A/S. However, the costs of the expert survey, including the experts' statements at the main proceedings, shall be conclusively paid by FlowCon International A/S in the amount of two-thirds of the costs and by Frese A/S in the amount of one-third of the costs.

Furthermore, FlowCon International A/S shall pay DKK 60,000 to the Danish Board of Appeal for Patents and Trademarks towards covering attorney's fees and expenses.

**IT IS HELD:**

THAT the injunction issued in pursuance of the ruling of Næstved enforcement court of 16 May 2008 is upheld.

FlowCon International A/S is ordered to acknowledge being prohibited from, in Denmark, manufacturing the control valve FlowCon SME, having the control valve FlowCon SME manufactured or importing, marketing or selling, including exporting, the control valve FlowCon SME.

Judgment is entered in favour of Frese A/S with respect to the independent claim made by FlowCon International A/S.

Judgment is entered in favour of the Danish Board of Appeal for Patents and Trademarks.

FlowCon International A/S shall pay DKK 140,000 to Frese A/S towards covering legal costs.

The costs of the expert survey, including the experts' statements at the main proceedings, shall be paid by FlowCon International A/S at a ratio of two-thirds and by Frese A/S with one-third of the costs.

FlowCon International A/S shall pay DKK 60,000 to the Danish Board of Appeal for Patents and Trademarks towards covering legal costs.

Lotte Wetterling

Henrik Rothe

Camilla Ljørring

Jakob Pade Frederiksen

Bo Dirnhofer Kristoffersen

Susanne Høiberg

Jakob Sørensen

(Sign.)

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**Certified true transcript**

**The Danish Maritime and Commercial Court, 21 August 2015**

**Miriam D. F. Russell**

**Court registrar**