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Supreme Court decision regarding the creative step test for Danish utility models

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In a recent decision (16.5.2012) the Supreme Court in Denmark has ruled on the requirement of creative step that applies to Danish utility models and serves the same purpose as inventive step in respect of patents.

The utility model-in-suit had been invalidated by the Danish Patent Office and that decision was upheld by the Maritime and Commercial Court in the first instance citing, inter alia, the preparatory works on which the Utility Models Act is based.

The preparatory works stress that it was the intention of the legislative body to lower the bar as regards the inventive aspect when compared to what is required for a patent. The Maritime and Commercial Court went on to state that the definition of scope of the skilled person's knowledge in relation to the assessment of creative step (i.e. for utility models) must be construed as being more narrow than that applicable to the the assessment of inventive step for patents.

In the case at hand the Court then defined the skilled person's (relatively speaking more limited) knowledge and found that the utility model-in-suit possessed the prerequisite creative step.

On appeal, the Supreme Court also cited the preparatory works as stating that the Utility Models Act is aimed at offering protection for technical creations that fall below the level that would allow for patenting.

Furthermore, the Supreme Court stated that very firm grounds must be provided for the court to set aside the Danish Patent Office's assessment of creative step.

The Supreme Court thus upheld the decision of the Maritime and Commercial Court but without, explicitly, confirming that court's deliberations on how to define the limitations of the skilled person's knowledge in relation to utility models.

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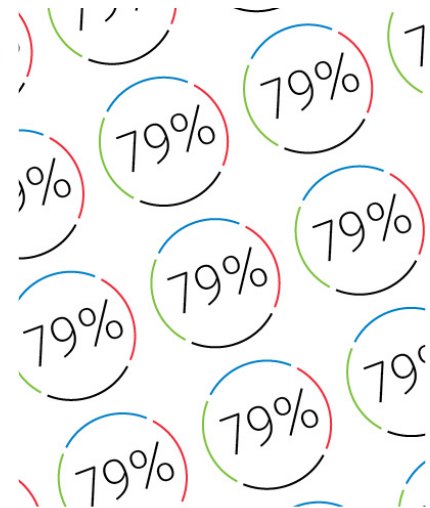
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This entry was posted on Tuesday, June 5th, 2012 at 10:33 pm and is filed under [Denmark](#), [Inventive step](#), [Novelty](#), [Validity](#)

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