



Turun yliopisto  
University of Turku

The Nordic Intellectual  
Property Moot Court  
Competition 2014 (NIP)

## STATEMENT OF CLAIM

On behalf of Danish Company  
Tougkvas A/S  
(CLAIMANT)

Against American Company  
Rope Twist, Inc.  
(DEFENDANT/RESPONDENT)

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## **LIST OF ABBREVIATIONS**

EEA- European Economic Area

EEC –European Economic Community

PCT – Patent Cooperation Treaty

ECJ - European Court of Justice

OGH - Oberster Gerichtshoff

NDA – Non Disclosure Agreement

# **APPLICABLE LAW**

## **European Legislation**

### Denmark

The Consolidate Patents Act (Consolidate Act. No.108 of January 24, 2012).

The Consolidate Trade Marks Act (Consolidate Act No. 109 of January 24, 2012).

Order on Application and Registration, etc. of Trade Marks and Collective Marks Order No.364 of May 21, 2008.

### European Union

Directive 2008/95/EC of the European Parliament and of the Council of October 22, 2008 to approximate the laws of the Member States relating to trade marks (Codified version) (Text with EEA relevance)

First Council Directive of December 21, 1988 to approximate the laws of the Member States relating to trade marks (89/104/EEC)

## **International Legally Binding Documents**

### World Intellectual Property Organization

Patent Cooperation Treaty Done at Washington on June 19, 1970, amended on September 28, 1979, modified on February 3, 1984, and on October 3, 2001 (as in force from April 1, 2002)

Protocol relating to the Madrid Agreement Concerning the International Registration of Marks adopted at Madrid on June 27, 1989, as amended on October 3, 2006 and on November 12, 2007

Patent Cooperation Treaty (PCT) done at Washington on June 19, 1970, amended on September 28, 1979, modified on February 3, 1984, and on October 3, 2001

# INDEX OF CASES

## Court of Justice of the European Union

Eis.de GmbH v. BBY Vertriebsgesellschaft mbH (case C- 91/09, Order dated 26 March 2010)

Die BergSpechte Outdoor Reisen und Alpinschule Edi Koblmüller GmbH v Günter Guni, trekking.at Reisen GmbH (Case C-278/08)

Google France SARL and Google Inc. v Louis Vuitton Malletier SA (C-236/08), Google France SARL v Viaticum SA and Luteciel SARL (C-237/08) and Google France SARL v Centre national de recherche en relations humaines (CNRRH) SARL and Others (C-238/08)

Interflora Inc. v. Marks & Spencer plc Flowers Direct Online Limited, opinion of advocate general Jaaskinen, September 22, 2011, Case C-323/09

## Courts of European Union

The Supreme Court of Austria Case C- 523/10 Wintersteiger AG v Products 4U Sondermaschinenbau GmbH) delivered on 16 February 2012

Wein & Co. v. Weinwelt, Supreme Court of Austria (Oberster Gerichtshof, 20 March 2007-17 Od 1/07, MMR 2007, 497)

OGH, Judgment of June 21, 2010, 17 Ob 3/10f, Bergspechte III.

# 1. STATEMENT OF FACTS

Tougkvas A/S (hereinafter "the Claimant") is a world known Danish company specialized in the development and production of fabrics to be used for various ropes and cords which must withstand wearing and tearing as well as hard strains, including for mountain climbing. These ropes contain a core and a protecting sheathing around the core.

The Claimant concluded after careful and thorough research that polyester fibers were preferable in the ropes. The Claimant also discovered that the sheathing would be particularly strong when the fibers in each ribbon were in parallel, woven together with transverse threads.

Rope Twist (hereinafter "the Respondent") is an American company specialized in production of the ropes.

June 04, 2013	Claimant filed an application for a patent under the rules of PCT Treaty.
October, 2013	Claimant and Respondent (hereinafter "the Parties") started the negotiations, before which the Parties had concluded a mutual Non Disclosure Agreement.
December 05, 2013	Claimant's patent application became publicly available.
December 20, 2013	Respondent informed that it had decided to pursue other priorities for the moment, and the negotiations ended without any agreement.
Late December, 2013	Claimant filed a trade mark application for the phrase MOUNTAIN SAFE with the Danish Patent and Trademark Office.
June-August, 2014	Trademarks were registered in all Nordic countries.
March, 2014	Claimant learned that the contract of delivery with one Europe's biggest producers of climbing gear, the Swedish company Hagfjäll, had gone to the Respondent.
January 01, 2014	The Contract was signed.
January 15, 2014	Deliveries started.

The Claimant learned that the Respondent produced rope material exactly as described in the Claimant's patent with an exception that nylon fibers were used instead of polyester. In addition, the Respondent marketed its new rope on the Internet with the text "Rope Twist technology makes mountaineering safe".

The Claimant continued its search and discovered that the Respondent had used Google's referencing service "AdWords" and registered "mountain safe" and "tougkvas" as key words.

The Claimant wrote to the Respondent and demanded the company to stop the marketing of its ropes immediately. The Claimant indicated that the Respondent had acted in breach of the confidentiality agreement, and Claimant's trade mark rights. The Claimant also demanded the Respondent to pay 100,000 (one hundred thousand) Euros for the lost profit due to the lost contract with Hagfjäll, and 300,000 (three hundred thousand) Euros as "fair compensation" for the headstart Respondent had received by misusing Claimant's confidential information.

The Respondent denied to have done anything unlawful when negotiating a contract with Hagfjäll and claimed that after the publication of the Claimant's patent application, the relevant information would no longer be confidential. According to the Respondent the claim for "fair compensation" had no basis whatsoever. The Respondent also disputed the validity of the trade mark MOUNTAIN SAFE.

The Parties agreed to refer the dispute to arbitration according to the Rules of the International Chamber of Commerce.

## **2. ALLEGED PATENT INFRINGEMENT**

### **The Respondent will infringe the Claimant's Patent**

The claimant submitted a patent application to the Danish Patent and Trademark Office on 5 June 2012. An international patent application in accordance with the rules of the PCT Treaty was filed on 4 June 2013. Later on, the claimant decided to follow up the PCT application with national applications in some important countries, such as Sweden, Norway and Finland. The delivery and marketing of the claimant's innovation to and within Sweden by Rope Twist will infringe the exclusive right of the claimant conferred by the patent once the patent for Sweden will be granted.

### **An international patent for Sweden**

According to section 29 of the Swedish Patent Act, an international patent application which the receiving Office has accorded an international filing date shall have the same effect in Sweden as a Swedish patent application filed on the same day.

According to section 31 paragraph 1 of the Swedish Patent Act, if the applicant desires to pursue an international patent application for Sweden, he shall within 20 months from the international filing date, or if priority is claimed, the date from which priority is claimed, file with the Patent Authority a translation into Swedish of the international patent application to the extent required by the Government or, if the application is written in Swedish, a copy of the application. The applicant shall, within the same time period, pay the prescribed fee to the Patent Authority. According to the paragraph 2 of the said section, if the applicant has demanded that the international application be subjected to international preliminary examination and if he has, within 19 months from the date given in the first paragraph, declared his intention, in accordance with the Patent Cooperation Treaty and its Regulations, to use the result of the international preliminary examination in applying for a patent for Sweden, he shall fulfill the requirements in the first paragraph within 30 months from said date. The paragraph 3 of section 31 sets forth that if the applicant has paid the prescribed fee within the time limit stipulated in the first or second paragraph, the required translation or copy may be filed within an additional time limit of two months, provided that a prescribed additional fee is paid within the latter time limit. The paragraph 4 reads as follows: '[i]f the applicant does not observe the requirements in this Section, the application shall be considered to be withdrawn as regards Sweden.'

The case makes no mention whether the claimant has in his international patent application claimed priority of the earlier patent application filed in Denmark as provided for in article 8 of the PCT. According to the paragraph 1 of the said article ‘the international application may contain a declaration - - claiming the priority of one or more earlier applications filed in or for any country party to the Paris Convention for the Protection of Industrial Property.’ Article 8(2) refers to the Paris Convention for the Protection of Industrial Property as for the conditions for, and the effect of, any priority claim declared under paragraph (1). According to article 4(a)(1) of the said convention ‘any person who has duly filed an application for a patent, or for the registration of a utility model, or of an industrial design, or of a trademark, in one of the countries of the Union, or his successor in title, shall enjoy, for the purpose of filing in the other countries, a right of priority during the periods hereinafter fixed’ whereas article 4(a)(2) sets forth that ‘[a]ny filing that is equivalent to a regular national filing under the domestic legislation of any country of the Union or under bilateral or multilateral treaties concluded between countries of the Union shall be recognized as giving rise to the right of priority.’ According to article 4(a)(3) ‘by a regular national filing is meant any filing that is adequate to establish the date on which the application was filed in the country concerned, whatever may be the subsequent fate of the application.’ Articles 4(c)(1) and 4(c)(2) set forth that the period of priority referred to above shall be twelve months for patents, and the period shall start from the date of filing of the first application, the day of filing excluded.

Prior to the filing of the international application, the claimant had duly filed an application in Denmark, one of the countries of the Union, and was thus entitled enjoy a right of priority for the purpose of filing an application in other countries during the twelve-month period of priority, which started from the date of the first application. The international application was filed on 4 June 2013, that is, within the period of priority.

Since the case makes no mention as to whether priority was actually claimed or not, the time periods set forth in section 31 of the Swedish Patent Act have started either on 4 June 2013 (the date of filing an international application) or on 5 June 2012 (the date of filing a patent application in Denmark).

In addition the case makes no mention whether, and if so, when, the claimant has, by the date of referring the present dispute to arbitration, already fulfilled the requirements set forth in section 31, that is, filed with the Swedish Patent Authority a translation into Swedish of the international patent application to the extent required by the Government and paid the

prescribed fee to the Swedish Patent Authority. Assuming that priority has not been claimed in the international patent application filed on 4 June 2013, the claimant is still on time to pursue an international patent application for Sweden as stipulated in section 31 of the Swedish Patent Act, has the claimant not done so already, as the 20-month time period will elapse only on 5 February 2015 and the 19-month time period for demanding that the international application be subjected to international preliminary examination will elapse on 5 January 2015, after which the claimant will still have time to fulfill the requirements of section 31 of the Swedish Patent Act until 5 December 2015 (30 months from filing the international patent application).

According to section 33 of the Swedish Patent Act, if an international patent application has been pursued in accordance with Section 31, then Chapter 2 [dealing with the processing of Swedish patent cases] applies in respect of the application and its processing unless otherwise specified in this Section or in Sections 34 to 37. Only at the request of the applicant, however, may the application be taken up for examination before the end of the time limit applicable according to Section 31, first or second paragraph. Thus, has the claimant not otherwise required, the application will be taken up for examination the soonest on 5 February 2015. Given that the international patent application has or will be pursued in accordance with Section 31 of the Swedish Patent act and, consequently, the provisions of Chapter 2 of the Swedish Patent Act can be applied to the international patent, following remarks can be made.

Section 8 of the Swedish Patent Act sets forth the requirements of patentability of inventions. According to the said section the patent application shall first of all be made in writing and filed with the Swedish patent authority or, in cases of international applications, with a patent authority in a foreign country or with an international organization, and it must contain a description of the invention, also comprising drawings if such are necessary, and a distinct statement of what is sought to be protected by the patent (patent claims). The description shall be so clear as to enable a person skilled in the art to carry out the invention with the guidance thereof, in addition to which the application shall also contain an abstract of the description and claims, which shall merely serve as technical information and it may not be taken into account for any other purpose. Furthermore, the inventor's name shall be stated in the application, and if a patent is applied for by someone other than the inventor, the applicant shall prove his title to the invention.

The international application by the claimant has been filed in accordance with the rules of the PCT treaty. The said treaty contain similar provisions as section 8 of the Swedish Patent Act in its articles 3–7. The articles read as follows:

#### Article 3: The International Application

- (1) Applications for the protection of inventions in any of the Contracting States may be filed as international applications under this Treaty.
- (2) An international application shall contain, as specified in this Treaty and the Regulations, a request, a description, one or more claims, one or more drawings (where required), and an abstract.
- (3) The abstract merely serves the purpose of technical information and cannot be taken into account for any other purpose, particularly not for the purpose of interpreting the scope of the protection sought.
- (4) The international application shall:
  - (i) be in a prescribed language;
  - (ii) comply with the prescribed physical requirements;
  - (iii) comply with the prescribed requirement of unity of invention;
  - (iv) be subject to the payment of the prescribed fees.

#### Article 4: The Request

- (1) The request shall contain:
  - (i) a petition to the effect that the international application be processed according to this Treaty;
  - (ii) the designation of the Contracting State or States in which protection for the invention is desired on the basis of the international application ("designated States"); if for any designated State a regional patent is available and the applicant wishes to obtain a regional patent rather than a national patent, the request shall so indicate; if, under a treaty concerning a regional patent, the applicant cannot limit his application to certain of the States party to that treaty, designation of one of those States and the indication of the wish to obtain the regional patent shall be treated as designation of all the States party to that treaty; if, under the national law of the designated State, the designation of that State has the effect of an application for a regional patent, the designation of the said State shall be treated as an indication of the wish to obtain the regional patent;
  - (iii) the name of and other prescribed data concerning the applicant and the agent (if any);
  - (iv) the title of the invention;
  - (v) the name of and other prescribed data concerning the inventor where the national law of at least one of the designated States requires that these indications be furnished at the time of filing a national application. Otherwise, the said indications may be furnished either in the request or in separate notices addressed to each designated Office whose national law requires the furnishing of the said indications but allows that they be furnished at a time later than that of the filing of a national application.
- (2) Every designation shall be subject to the payment of the prescribed fee within the prescribed time limit.
- (3) Unless the applicant asks for any of the other kinds of protection referred to in Article 43, designation shall mean that the desired protection consists of the grant of a patent by or for the designated State. For the purposes of this paragraph, Article 2(ii) shall not apply.
- (4) Failure to indicate in the request the name and other prescribed data concerning the inventor shall have no consequence in any designated State whose national law requires the furnishing of the said indications but allows that they be furnished at a time later than that of the filing of a national application. Failure to furnish the said indications in a separate notice shall have no consequence in any designated State whose national law does not require the furnishing of the said indications.

#### Article 5: The Description

The description shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art.

#### Article 6: The Claims

The claim or claims shall define the matter for which protection is sought. Claims shall be clear and concise. They shall be fully supported by the description.

Article 7: Drawings

- (1) Subject to the provisions of paragraph (2)(ii), drawings shall be required when they are necessary for the understanding of the invention.
- (2) Where, without being necessary for the understanding of the invention, the nature of the invention admits of illustration by drawings:
  - (i) the applicant may include such drawings in the international application when filed,
  - (ii) any designated Office may require that the applicant file such drawings with it within the prescribed time limit.

Given that the international application has been filed in accordance with the said articles, it can thus be deemed to fulfill also the criteria set forth in the Swedish Patent Act. Furthermore, the International Search Report revealed no prior art that could put novelty or inventive step into serious question.

According to section 12 of the Swedish Patent Act, an applicant who is not domiciled in [Sweden] shall have an agent residing here who shall be entitled to represent him in all matters concerning the application.

According to section 19 of the Swedish Patent Act, if the application is complete and no obstacles to a patent are found, the Patent Authority shall notify the applicant that a patent can be granted. Thus, as the international patent application filed by the claimant must be considered to fulfill all the criteria for patentability and assuming that it also fulfills other requirements set forth in chapter 2 of the Swedish Patent Act, and no other obstacles are found, the patent can be granted once it will be taken up for examination.

### 3. ALLEGED TRADEMARK INFRINGEMENT

#### **Respondent has infringed the Claimant's trademark**

The Claimant and the Respondent operate in the same field of business. Both enterprises develop and produce fabrics for various ropes and cords used both in towing heavy objects over long distances and in mountain climbing.

Since the Claimant and the Respondent operate in the same field of business the clientele is relatively the same.

The Respondent has received unfair advantage in the market by using the confidential information which it obtained during the negotiations with the Claimant and by copying the Claimant's trademark. The Claimant is a well-known Danish company in the field of development and production of fibers for ropes. The Respondent is a well-known American company operating in the same field of business. All the above stated facts indicate that the Claimant and the Respondent are competitors.

The Claimant's trademark is properly registered and in conformity with Articles 12, 13, 14, 15 and 17 of the Consolidate Trade Marks Act (Consolidate Act No. 109 of 24 January, 2012) (hereinafter referred to as the "Consolidate Act"). Moreover, the Claimant property registered its trademark in conformity with the Madrid Protocol provisions: Articles 2, 3, 3bis? and 3ter? (hereinafter referred to as the "Protocol") and in conformity with the Trade Mark Directive 2008/95/EC Articles 2, 3 and 4 (hereinafter referred to as the "Directive").

The Respondent's use of its design in Google referencing service "AdWords" is likely to cause confusion as the design implies to the Claimant's goods. According to Article 5 of the Directive:

*Rights conferred by a trade mark. 1. The registered trade mark shall confer on the proprietor exclusive rights therein. The proprietor shall be entitled to prevent all third parties not having his consent from using in the course of trade:*

- (a) any sign which is identical with the trade mark in relation to goods or services which are identical with those for which the trade mark is registered.*
- (b) any sign where, because of its identity with, or similarity to, the trade mark and the identity or similarity of the goods or services covered by the trade mark and the sign, there exists a likelihood of confusion on the part of the public; the likelihood of confusion included the likelihood of association between the sign and the trade mark.*

As we stated above, the Claimant and the Respondent are competitors, thus subparagraph a) is applicable. In case the Claimant and Respondent are not deemed competitors, subparagraph b) is applicable, i.e. the finding that the Claimant and the Respondent are not competitors will not exempt the Respondent from liability.

The Respondent's claim of possible invalidity of the Claimant's trade mark lacks merits/ has no grounds whatsoever, as it is inconsistent with the grounds for invalidity stated in Articles 3 and 4 of the Directive and with the articles 13, 14 and 15 of the Consolidate Act

#### **4. ALLEGED BREACH OF NON DISCLOSURE AGREEMENT**

The Claimant has entered into negotiations with the Respondent in October 2013. Before the meetings between two companies started, they concluded a mutual Non Disclosure Agreement (hereinafter referred to as "NDA").

The respondent has acted in breach of the NDA entered into between the parties on October 12, 2013. In the said agreement both parties undertook not to 1) copy, distribute or disclose any confidential information to any other person other than employees as mentioned in article 2 or to 2) use any confidential information for any purpose other than in relation to our assessment of the project with the exception that the said restrictions shall not apply to any information which 1) at the date of its disclosure is public knowledge or which subsequently becomes public knowledge other than by any breach of this agreement; 2) was lawfully in the recipient's possession prior to such information having been disclosed or made available to the recipient by or on behalf of the other; 3) is at any time after the date of this agreement, acquired by the recipient from a source other than the other party, provided such source has not acted in breach of an existing obligation of confidentiality or secrecy or; 4) is required to be disclosed by applicable law or regulation or order of a court of competent jurisdiction or government agency, provided, to the extent permitted by law, the recipient consult with the other party prior to such disclosure.

The respondent has acted in breach of the confidentiality agreement in that they have used the confidential information for a purpose other than agreed upon by the parties (that is, use in relation to the assessment of the project between the parties) in circumstances in which none of the exceptions from confidentiality, as agreed upon, apply. According to the provisions of the NDA 'confidential information' means financial, technical, operational, commercial, management and other information, experience and expertise of whatever kind relating to the parties of the project.'

The Claimant's applications were made public on the December 05, 2013 according to section 22 of the Consolidate Patent Act, as 18 months has elapsed since the priority date. The Respondent has thus been able to access to the details of the Claimant's invention. The Respondent has ended the negotiations very soon after the publication of the applications (on

December 20), and has contracted with Hagfjäll a few days after this termination (on January 01).

## 5. ALLEGED LIABILITY

**The Claimant is entitled to compensation for the patent infringement performed by the Respondent.**

According to section 57 of the Swedish Patent Act

*Any person who infringes the exclusive right which a patent implies (infringement of patent) and has done so deliberately or by gross negligence shall be fined or sentenced to imprisonment for a maximum of two years. A person who has offended against a prohibition on penalty of a fine under Section 57a may not be sentenced for an infringement which is covered by the prohibition. Any person attempting or preparing to offend under the first paragraph shall be dealt with under Chapter 23 of the Penal Code. The prosecutor may institute proceedings for those offenses referred to in the first and second paragraphs only if the injured party reports the offense for prosecution and prosecution is for special reasons required by the public interest.*

According to section 58 of the Swedish Patent Act

*‘anyone who commits patent infringement deliberately or through negligence shall pay a reasonable compensation for the use of the invention as well as compensation for further damage which the infringement has caused. When determining the size of the compensation, consideration shall also be given to the patent proprietor's interest in the patent not being infringed and to circumstances other than of purely economic importance. If anyone commits patent infringement that is not deliberate or due to negligence, he shall pay compensation for the use of the invention insofar as this is found reasonable. An action for compensation for patent infringement may only cover damage during the last five years before the action was brought. For damage suffered during the time before that, the right to compensation shall be lost.’*

According to section 59 of the Swedish Patent Act

*If petitioned by the person who has suffered infringement of his patent, the Court may as appears reasonable for the prevention of continued infringement decide that a patent-protected product which has been manufactured without the patentee's consent or an object whose use*

*would entail an infringement of a patent shall be modified or surrendered for safekeeping for the remainder of the period of the patent or be destroyed or, in the case of a patent-protected product, be surrendered against payment to the person who has suffered the infringement. The foregoing provisions do not apply against a person who has acquired the property or a special right to it in good faith and who has not himself infringed a patent. Property referred to in the first paragraph may be confiscated if it may reasonably be assumed that an offense has been committed under Section 57. With regard to such confiscation, the rules governing confiscation in criminal offenses in general apply. Notwithstanding the provisions of the first paragraph, the Court may, if there are special reasons, decide if petitioned that a possessor of property as referred to in the first paragraph shall enjoy the use of the property for the remainder of, or a part of, the period of the patent for a reasonable payment and on reasonable terms in other respects. The provisions of the first to third paragraphs shall also apply in respect of attempts or preparations to offend under Section 57, second paragraph.*

According to section 60 of the Swedish Patent Act,

*‘if an invention for which a patent is sought is used commercially after the documents in the application file have become available according to Section 22, the stipulations on patent infringement shall apply to the extent that the application results in a patent. For the period before the patent was granted under Section 20, however, the patent protection shall only extend to that revealed in both the claims as worded when the application became publicly available and the claims according to the patent. Punishment shall not be imposed, and damages in consequence of use before the patent was granted may only be adjudged under Section 58, second paragraph.’*

**The Claimant is entitled to compensation for the trademark infringement performed by the Respondent.**

Article 42.5(1) of the Consolidate Trade Marks Act provides that:

*“Any person who intentionally or grossly negligently infringes a trade mark right established by registration, use or pursuant to the Council Regulation on the Community trade mark shall be punished with a fine”.*

Additionally, Article 43(1) of the Consolidate Trade Marks Act provides that:

*“Any person who intentionally or negligently infringes another person’s trade mark right shall pay (i) a reasonable compensation to the injured party for the exploitation and (ii) damages to the injured party for the further injury which the infringement has caused.”*

Article 43(2) of the Consolidate Trade Marks Act expressly stipulates that in fixing the damages for the further injury which the infringement has caused inter alia the loss of profit suffered by the injured party and the illicit profit obtained by the infringer shall be taken into consideration.

As a result the Claimant files a claim demanding an adequate compensation for the exploitation of the invention and for a possible damage resulted from such an infringement. It is logical for the Claimant to receive the compensation for there are no rationales substantiating the free use of the Claimant’s patent by the Respondent

**The Claimant is entitled to compensation for the violation of the NDA concluded between the Claimant and the Respondent.**

The Claimant and the Respondent concluded the NDA on October 12, 2013 and defined basic principles of Nordic law as governing law to the NDA.

The Claimant submits that the content of “basic principles of Nordic law” can be clarified through the UNIDROIT Principles 2010 as well-known and established set of principles recognized by the majority of legal systems.

Consequently, the Claimant is entitled to compensation for the NDA violation by the Respondent due to proper application of Article 7.4.1 and Article 7.4.2 of the UNIDROIT Principles 2010.

Article 7.4.1 of the UNIDROIT Principles 2010 stipulates that:

*“Any nonperformance gives the aggrieved party a right to damages either exclusively or in conjunction with any other remedies except where the nonperformance is excused under these Principles.”*

Article 7.4.2(1) of the UNIDROIT Principles 2010 stipulates that:

*“The aggrieved party is entitled to full compensation for harm sustained as a result of then on performance. Such harm includes both any loss which it suffered and any gain of which it was deprived, taking into account any gain to the aggrieved party resulting from its avoidance of cost or harm.”*

The Claimant submit that unfair use of the Claimant’s patent and trademark shall constitute violation of the NDA and claims damages calculated in accordance with principle of full compensation.

Summary compensation for the patent infringement, the trademark infringement and the violation of the NDA executed by the Respondent shall consist of:

- 100 000 Euro as lost profit due to the Claimant’s lost contract with third party;
- 300 000 Euro as fair compensation for misuse of the Claimant’s confidential information.

Additionally, the Claimant claims from the Respondent the attorney's fees

## **6. REQUEST FOR RELIEF**

For the above mentioned reasons, the Claimant respectfully requests the arbitral tribunal to find that:

- 1.The Respondent is liable for breach of Non-Disclosure Agreement
- 2.The Respondent is liable for the infringement of trademark
- 3.The Respondent is liable for unlawful use of Claimant's innovation
- 4.The Respondent should pay an amount in excess of 400.000 euros for compensatory and punitive damages, together with the costs of this suit, interest from the date this suit was instituted, reasonable attorney's fees and such other relief as the Court may deem just and proper.