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European Court of Human Rights
Council of Europe
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Att	: Mr. Søren Nielsen
Re	: Kristiansen and Tyvik AS v Norway
Application number	: 25498/08
Sent by	: Mail and fax
Your fax number	: 33 3 88 41 27 30
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The applicants' response to the government's observations will be separated into three sections: Section A (a review of the case in the light of the Government's observations), Section B (comments by subject of the Government's observations), and Section C (Claims, just satisfaction).

Section A - A review of the case

Through many years, the irrelevant arguments from the Norwegian Industrial Property Office (NIPO) and the Board of Appeals have shown their lack of professional foundation, as well as their intention to using arguments regardless of their relevance. It is also seen from the correspondence that NIPO has shifted arguments during the treatment of the application, which shows that their professional insight has been insufficient for evaluating their own arguments as well as the technical content of the application.

The great number of documents shows that NIPO has produced letters rather than relevant arguments. Through all the years from December 1996, when the case was resumed after the applicants' appeal to its director, NIPO has used its lack of insight into the physical and technical foundation of the application as an argument for refusing it.

Though the refusals have purported to be absolute exclusions from patentation, they have not led to the termination of the case. This is one of the inconsistencies of the examination; and its interpretation is that the prolongation of the period of apparent examination was its purpose.

One of the problems of NIPO was that it did not build its arguments upon the physical principles of the construction, but upon the existing technology within the same field, and, rather without any self-criticism, upon neighbouring, though irrelevant fields, e.g. helicopter technology. Together with the recurring reference to "scepsis", this diverting of argument became new reasons for using more time.

The technology for which the patent was applied in 1990 is built upon other physical principles than the conventional propulsion of ships and aeroplanes. It does not work in the same way; and it produces other effects.

Its physical foundation has been known since 1738. In spite of its teaching at NTNU and its predecessor, NTH, cf. the textbook of Yuan, apparently to no avail.

Even in its best forms, the conventional technology cannot produce the same propulsive efficiency as that described in the application. For aeroplanes, their lifting is added to the propulsion.

This new form or new effect is the reason contained in the intention and the criteria of patent law, thus the legitimate reason for applying for a patent. The task of NIPO is situated on the limit between the known and the not yet existing. Its director's lament over this, in his eyes, insupportable position, in a note of February 19 2007, is vain. His evaluation of his task is in conflict with its law-given conditions and should have led him to renounce his office. Nevertheless, the many patent offices of the world have managed to identify new technology.

This was understood by NIPO's first examiner of the application. He had to leave the examination when he was given other tasks. He is reported to have said that he would have given the patent.

When NIPO delivers a great number of copies of letters, etc, to the court, it is the final proof of its lack of a sufficient argument for refusing the application, as it tries to hide this lack behind a smoke screen of evasions. These evasions were produced as irrelevant arguments through at least fifteen years.

The last of the examiners asked the help of NTNU, The Norwegian Technical-Scientific University, which, in spite of its textbook, demonstrated its insufficient insight into the physical function of the object of application, its technical function, as well as its relation to the currents and forces round the vessel, cf. the response from NTNU,[1] which contains unfounded suppositions concerning the currents and their forces.

The letter from NTNU was communicated to Tyvik AS with a retard of 44 months.
At another occasion, it took 22 months to re-establish the treatment of the application after the negligent relation to the post office concerning a registered letter; and several years before 1996 elapsed without apparent movement of the case. This points to at least eight years of delay on the account of NIPO. The periods of correspondence were not much better, as most of that relative to the application was evasive, in the form of counterarguments without relevance.

The defective insight of NTNU is not a sufficient reason for freeing NIPO of the responsibility of evaluating applications.

The problem of NIPO is that the method for which the patent was applied, produces its effect as postulated in the patent application. This is in spite of the presumptions of the examiner in his letter of December 16 1996 and all his following letters.

His dilemma could have been solved, cf. the applicants' invitation to a demonstration at the University College of Vestfold in December 2001.The director of NIPO and two of the engineers refused the invitation. The demonstration showed the method and its result.

[1] See the Government's observations October 1 2010, Appendix # 19

Later tests of a ship-size prototype (100 metric tonnes) have been performed as parts of a program of optimalization of propulsion parameters.[2] This part of the technical development has not been terminated.

Seen as a whole, NIPO has treated and judged the application according to its lack of insight in its physical foundation. It has not wanted to hear how forces are released in water, in spite of Daniel Bernoulli's descriptions of the hydrodynamic function, which was published in 1738. Instead of lending an ear to the workings of reality, NIPO has hidden behind its director's reference to his difficult position. Relative to his task, his psychological picture of his position is irrelevant, though it has probably marred the functionality of NIPO for long. As long as he stays, he is responsible for its functional deficits.

When an application is decided upon like this one, by a partially explicit, partially implicit reference to NIPO's lack of understanding of the relevant technical and physical functions producing its results, and, at the same time, to its demonstrating lack of will to approaching them, it has deserted its task. This is documented through its paper work and explicited by its director.

It should be mentioned that the physical function exploited by any specific construction is not a patentable part of the application, as physical functions are not patentable, nor precluding patent.

Patents concern specific constructions and specific applications of their products. An insight into the physical function would have made it easier to give the patent, though its lack is not a sufficient reason for refusing it.

The lack of insight could have been a good reason for augmenting it. In the actual situation, where the evaluation is done on behalf of the state, not seeking insight is a breach of duty of each professional involved as well as of NIPO, and a breach of the duty of this office as a part of the responsibility of the state.

The applicant's possibility of seeking judicial redress during the administrative treatment does not lie with the ordinary courts, as the special law of NIPO has no admittance for intermediate objections.

Seen in its totality, the case was decided by reference to NIPO's lack of insight into the foundation of its implied physics. This argument has been promoted by NIPO since its re-awakening by the applicants' call in 1996, six years after the date of application. The first reaction from NIPO was: "it will not work" (December 16 1996).

NIPO has had the option of seeking information from better sources than NTNU. One of them was the applicants' demonstration of the method in 2001, to which the director and two examiners declined the applicants' invitation. Instead, NIPO has relied upon its lack of insight. There is a connexion between lack of information and protracting the treatment of an application for nearly eighteen years.

The Patent Director's argument concerning his difficult position between the past and the coming falls to Earth considering that he has avoided using a day or two of these eighteen years for seeking information from existing sources, e.g., the applicants' demonstrations, or seeking help from qualified informants, which were not the carriers of the conventional knowledge.

The treatment (examination) of this application demonstrates a sum of ignorance and evasion. The treatment carries the information that NIPO ought to have acted differently,

[2] See the Complaint, Appendix # 5

and that it had that option. These are both conceded in the reply of the Norwegian state to the Court. They are both punishable under Norwegian law.

The Norwegian Industrial Property Office works as a de facto court according to its special law of 1967. It is thus not subordinated to other courts on the same level. It also has its own court on a superior level, the Board of Appeals. The specific provisions of the law of 1967 are adapted to its purpose.

The specific administration of cases is also regulated by the constitutive law of NIPO, July 2 1910, No 7. Its §3 installs the director of NIPO as the chairman of the Board of Appeals, whose only task is the treating of complaints concerning decisions of NIPO. The King appoints the Vice President of the Board, cf. this law, §3. This right is now transferred to the Department of Industry and Trade.

Its application seems vacillating, since the Board has delivered a decision in this case, without signatures or any reference to a Vice President. Decisions of a board, an official, or a judge, are by law supposed to be signed, in order to refer their authority to the plenipotentiary individuals.

The referred decision of the Board, of September 22 2008, was "served" without signatures.[3] The produced signatures which, out of the blue, appeared on a separate sheet of paper received *after* the applicants' complaint over the referred decision of the Board of Appeals refusing the patent applied for, do not alter the state of the referred decision, as it lacked signatures, thus regarded as a paper of no legal force in addition to being illegal.

The production of a sheet with four signatures is a concession to the applicants' complaint and an admission of illegality of the referred decision of September 22 2008. These signatures also prove the illegality of the Board, as the Board was undernumeral and lacking its president or vice president, since neither the director of NIPO nor his substitute was present, cf. its constitutive law of 1910.

This places the purported decision, in two aspects, outside the realm of lawfulness of NIPO's constitution.

This disrespect of NIPO's conditions has followed the case from its beginning.
In its letter of November 29 2005 NIPO reports that The Board of Appeals two weeks earlier had decided that the application should be the object of a reality treatment (i.e. examination of the merits), which had not been done earlier (sic).

This indicates that the treatment of the application, for fifteen years, had been a game without seriousness. It shows that the application had not been treated as serious enough for a correct treatment. Seen from outside NIPO, it was serious enough for describing a workable technology.

This workable technology was, however, not serious, or real, enough for NIPO to being taken seriously as a patentable technology. This implies contempt of patent law by the exclusion of specific constructions from the category of potential products intendedly included in it. This is the most fundamental of all imaginable wrongs related to the treatment of patent applications.

Through this backside of NIPO is shown its function as a judicial institution, since the first part of its duty is to decide whether a case should be included in the realm of the law of patents.

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[3] According to Norwegian Law on Court Administration, § 160, any documents that are to be served must be signed and dated.

Two solutions were at hand. One was to return the application as outside the jurisdiction of NIPO. The other was to leave it to some other examiner. The first was unlawful. The second, a lawful possibility, was eschewed. The choice of NIPO was an undercover version of the first alternative. It worked well as a retarding procedure and as an unlawful impediment to patenting.

What was the role of two jurists at a meeting of the Board of Appeals (to which the board of Tyvik AS was invited); both of them professors and one of them a doctor of patent law? Nothing was said about the marginalization or extradition of the patent application executed by the examiner on the level below the Board.

The criterion of a patent application is that its subject should be subsumable under §1 of the law of patents. If not, it should be refused treatment and referred to the adequate authority. The postulated position between them is illegal.

§1 of the patent law is, though, not the criterion for the detailed evaluation, as this takes place in the relation to the existing technology. "Industrial exploitation" is a classification of principle, not a functional or normative definition. These are products of the continuous development of methods and markets.

Faking a treatment of an application for fifteen years, even of an application that should not be admissible to patenting, is regarded as a violation of the laws of patenting, official administration, and chapter 11 of the penal law. If it should have been a possible legal outcome, not refusing the application straight off is a violation of ch. 11. A more serious violation of the law is the treating of the application in a premeditated breaking of the ch. 11 of the penal code.

The law section of NIPO has communicated (February 2 2006) that the provisions of judicial incompetence (law of 1910, § 6, second paragraph regarding conflict of interest) are routinely disregarded. This is a separate violation of law. The Court will find the letter attached to the Complaint as Appendix # 12.

Added to this comes a sufficient proof of the lack of professionalism shown in the counterheld patents of slight or no relevance, or the repeated references to lack of "known theory".

This lack of references to known patents or known technology is recurrent in NIPO's correspondence in this case. It shows that NIPO is not willing to accept any technology deviating in some principal aspect, as apparently defined by NIPO itself, from the known. This is part of the daily practice of holding the future technology at bay, cf. the note from director J. Smith, in which he complains his difficult position relative to future technology.

One of the means of fighting new technology is to use any argument, even the not relevant. In the letter of November 29 2005 the counterargument D3[4] is explicitly using "Jet propulsion ..." as its method. This physical principle is close to the opposite of the hydrodynamic effect used in the method of the applicants' patent application.

The use of D3 as a counterargument shows a lack of understanding of the physics of fluids and of the physical function of the construction for which the patent was applied. In this instance, the examiner confounded the hydrodynamic effect with the reactive effect of, e.g., a jet engine. It seems that the examiner has searched for any argument that could prolong the duration of treatment.

[4] See the Government's observations, Appendix # 41, page 2.

The principle of patenting new technology is a means of inspiring new industry and improving the economic activity of a country. The fight against new technology seen in the consequent activity of NIPO in this case is a desperate action against new thoughts, even thoughts 250 years old, cf. Daniel Bernoulli's publication from 1738. Though new thoughts are published within academic circles, these are the most ardent defenders of the existent, cf. NTNU

The principle of conservation of the known territory of technology also as the range of permissible new technology has even been introduced into NIPO's directory for applicants, which demands a reference to "the technology upon which an application is founded."

This, the complaint of NIPO's director, the continuous quest for "known theory", the administrative practice, and the demonstrated mental frame of the examination point in one direction, which is that of defending NIPO against the technology not known or not already practiced or described within the frame of existing technology known by the examiners.

Together, they express the will to suppressing any new technology coming from outside the known territory of accepted professional knowledge. The support from the Faculty of Marine Technology at NTNU is a testimony to this.

NIPO is presumed to treat patent applications according to patent law, which concerns "industrially exploitable inventions" (§1); and its main task is, after application, to give patent to "... inventions which are new relative to those known before the day of application, and which are significantly different from them." (§2 first part). These conditions are commonly called "novelty" and "invention height".

The formula "industrially exploitable inventions" is a legal characteristic found in the "Betenkning angående nordisk patentlovgivning" (1964, p. 100-102) (Memorandum concerning Nordic patent law).

The formulation of the law is the name of a class of objects, not applicable as a characteristic of single objects. The instrumental characteristic is found on p.102 as "...technical character"

It is seen from technical history that the patented characteristics do not include physical or technical principles. These are commonly known; and they are the general conditions of the activities of society. They are thus not patentable parts of technology.

A physical principle is not an invention. A technical principle enters an intermediate position, since it is once invented, like the wheel and the cylinder. These are no longer among the patentables; and their use does not lead to the denial of patent.

All industrial methods work by a limited number of physical and technical principles and effects. Added to the principles rotation and pressure differential came electricity and magnetism in the 19th century. In the 20th century came radioactivity, high frequency radiation, solar cells, etc.

In the memorandum cited, the relations between 1) the general conditions of the use of physics in technical connexions, (2) the general conditions of technology, (3) the specific use of physical functions, and (4) the specific constructions of technical equipment, were not defined. This has led to problems of patentation. This has led to problems of patentation.

The three first groups do not contain patentable parts; and the use of patentable details belonging to group 4 does not introduce regressively any patentability of the parts of the groups 1-3 employed together with elements of group 4.

All patents of a partly or wholly technical character will use elements from the groups 1-3, while their patentable specificity is found in group 4.

The task of NIPO is presumed to be the recognition of new technology in addition to the variations over the themes of known technology.

New technology is characterized by its discontinuity relative to the known.
Its patentable difference from known technology is a part of its technical aspect, not of its physical foundation in a physical principle, nor in the applied technical principles.

In constructions and the patents describing them is found a series of moments:

1. Physical principle.
2. Technical principle.
3. Modus of application.
4. Field of application.
5. Technical form.
6. Specific effect.

The first point can be illustrated by the principle "over-pressure", used consciously in the transmisson of forces since James Watt, in 1769. The reciprocal use of "under-pressure" has been used since Thomas Newcomen, in 1712.

The second point can be illustrated by the technical principles "piston in a cylinder" or "rotating machine".

The third point can be illustrated by using the piston in the cylinder for producing a higher or lower pressure in a fluid.

It appears from patent papers that the patentable is the specific form (5) intended to produce a specific effect (6) with a specific purpose (4) described, and nothing else.

The physical and technical principles and the modi of application are the common fundament of the societies' technology and are outside patent law. They are not specifically patentable; and as parts of a patentable construction they are not decisive for its patentability cf. patent history.

Since the first three points are not patentable, they are not valid as counterarguments to a patent application. The novelty of a construction does not consist in its using a hitherto unknown physical principle or a technical principle not earlier applied.

The known physical principle or the known and already applied technical principle are not patentable parts of a construction. Thus they cannot preclude a patent. If they are parts of a counterheld patent, they are not the parts that make it valid as such. On this point, NIPO does not seem to understand its legal position, or to bother about it.

Using a physical or technical principle as a part of a construction does not imply a demand for monopoly to the principle.

That which is physically or technically possible will depend upon an adequate technical form for its use. The physical theory concerning the relation between velocity and pressure in a stream, described by D. Bernoulli in 1738, is the physical function of the Norwegian patent No. 305769, a security valve.

If the Norwegian Board of Appeals were right in its postulate that the use of a physical principle precludes its use in further patents, the patent application for the security valve should have been met with the arguments that the principle was known already, and that it was the effective physical principle of the patent application 1990 5214.

In other known technology, the same principle is a part of the function of aeroplane wings, as wings also utilize the vertical component of the reactive force of the deviation momentum produced by the wings on the passing air.

The three last points of the six are those possibly including patentable elements. New patents are given for novelty or invention height on at least one of these points. The evaluation of novelty is seen to be idiosyncratic.

It is therefore not in conformity with the relation between general principles and patentable technology when NIPO generally and the Board of Appeals in its letters refer to *known principles* as the reason for refusing patents. This is explicit in the letter of September 29 2004:

> "*The Board sees it as obvious that the conditions of patentability, novelty and invention height, are not present for the propulsion technology intended for aviation and sailing. The principles of fluid streams and the effects on which these patent application parts are resting, are well known within this realm.*"

Please find the letter attached to these observations as **Appendix # 1**.

This argument has been referred to at several occasions, but is nevertheless not valid in any patent context. If known physical or technical principles had precluded new patents, the patent offices of the world would have been out of work. After, among others, Watt, Faraday, Maxwell, Tesla, and the Wright brothers, most patent applications should have been refused.

From patent history it will have been seen that it is not any pressure differential, rotation, acceleration, etc. that has been patented, but the technological development and form of the technical principles used for producing the deviations from the situation not object to technical influence, since the purpose of technology is the production of these deviations from the entropic condition.

Using a pressure differential depends upon the technical procedure for producing it; and it is the technology of this technical procedure for which the patent is applied, together with a specific purpose. A possibly precluding technology should be the same, within a small margin, have the same purpose and the same effect.

That which is not patentable cannot become an object of monopoly by patent; nor become an impeding precedence to new patents.

Unlike the patentable artefacts, the physical principles are functions of Nature. They are not objects of monopoly, and are not patentable, nor hindrances to patenting.

It is not the task of the patent system to evaluate physical theories or patent applications' relations to physical theories. The principles of physical effects are not parts of the patentability of a patent application. Instances of this are the inertial force at braking, augmenting pressure and temperature at compression, reflexion in a mirror— and transmission of forces at the lowering of pressure in a stream.

So much the worse for the patenting system is it when it gets its physics wrong. When the starting argument of the last examiner was "will not work" (1996) and his last

argument was the unqualified "scepsis" (many years up to 2008), their sum is a lack of the necessary knowledge.

It follows from patent law that nothing else than technical constructions can be patented in a non-biological, technical, context.

Patents are given for technical appliances exploiting physical principles in order to obtain a specific effect by means of a specific construction; and this construction is its patentable part, regard taken to specific effects or purposes.

Novelty and invention height do not concern principles, but specific technical constructions relative to the existing technology. Therefore, principles, or their form of application or effect, are not valid as arguments against a specific form or effect. Counterarguments are specific, not general. This is seen as well from patent history as from patent law's lack of reference to physical principles and their immediate effects, as the law concerns specific constructions for technical, chemical, and biological purposes.

Through NIPO's treatment (examination) of the patent application 1990 5214, the relation between theory, technical applications, and patenting do not seem to be understood.

If patent demands should have any meaning, it should be as the significant distinctions between patents. It should be possible to presume that their every word has its place and significance in order to distinguish their range and right from those of other patents. If this and the references given should be without significance, the examination would be dominated by the presumptions of the examinator. In that case, the patenting system would be inefficient and superfluous.

In order to obtain a lifting force, the flushing or blowing should take place "...rearwards and athwart the direction of the force vector giving the combined lift and propulsion ..." (demand 2, original demand 4).

Patents as judicial objects seem to be given for nothing more than that for which they are applied. It should therefore be possible to expect their examination to be exerted by a rather close reading of the patent demands. This does not seem to be the case at NIPO. The examiner saw the object of the application as so far from technical precedence that it should not be subsumable under §1 of the patent law, cf. his letter of August 30 2001.[5] This argument is also formulated as "unknown principle" by the same examiner, cf. his letter of May 5 1999.[6]

Since this is an approach to examination in conflict with the patent law, thus a violation of the obligations of NIPO, it is a punishable violation of ch. 11 of the penal law by NIPO. The responsible for this breaking of law is the director of the organization, since he is its only official. Regardless of the sloppyness or intended breaking of law of the examiners or other subordinates, the state's representative in the organization is its director, who is the one responsible.

The only obligation of the official is, on behalf of the state, to be the person responsible for the organization's filling its obligations within the frame of law.

The examination was resumed after the case had been mislaid, cf. "forlagt" in the letter December 9 1996 from the patent director. Mislaying is an activity for which there is no room in a state organization.

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[5] See the Government's observations, Appendix # 32
[6] See the Government's observations, Appendix # 20

In his letter December 16 1996,[7] the examiner found that the patent application was based upon "a theoretical idea which, until now, four civil engineers find not to be working in practice." (italics in the original).

Added to the arguments not conform to patent law, the belief of the civil engineers is contrary to reality. The examiner did not attend the demonstration in 2001, to which he and the patent director were invited.

The letter of December 18 1997[8] from NTNU was communicated to the applicant August 30 2001 with the opinion that the application fell outside patent law, which nevertheless did not make him refuse its treatment and return the application from NIPO.

One characteristic, not commented upon through the examination, is that the construction will permit the lifting of an aeroplane without any axial velocity, and with a smaller energy cost than the referred method of T. Mehus.

At flushing or blowing a body in order to give it a momentum, the power requirement is inversely proportional to the square root of the density of the flushing medium ($\alpha \rho^{-1/2}$), thus the flushing with air is easiest practicable in the atmosphere.

The air-blown torpedo, though efficient, is energetically expensive. The underwater air-blown ship has a limited use by lowering the resistance. For economical propulsion, a ship should be flushed under water; and an aeroplane should be blown with air.

The reference to "well known principle" has no relevance as an argument against a technical method. NIPO "... means that the theories of the applicant will not work in practice..." and reference is made to "the scepsis of the examiner", cf. its letter of August 30 2001.

NIPO's examination was violating the patent law and administrative law by beginning at the presumptions of the examiner at the cost of the information present in the application.

The specific counterarguments should be seen in relation to the characteristics of the points of the patent application. The wording is not the only reason for removing actuality from the counterarguments. The effects produced by blowing or flushing rearwards are not obtainable by the constructions referred in the counterargumented constructions.

This property is not commented upon by NIPO or by the Board of Appeals.

Patenting the lifting of aeroplanes is not precluded by the counterargument held by the Board, U.S. pat. 4,200,252, which impedes the reactive, horizontal rotation of the helicopter, without producing any lifting or propulsive moment.

The details of the application as reformulated in June 2007 show that the application is clearly distinguished from the counterarguments.

Since the wording of the characteristics are the decisive legal distinctions between constructions, the referred counterarguments do not imply any preclusion to patenting the application 1990 5214.

One instance is that the point 4 of the first formulation of the application contains "...rearwards...", which also recurs in later wordings. This specific part of the patent

[7] See the Government's observations, Appendix # 14
[8] See the Government's observations, Appendix # 19

application does not coincide with the wording of the counterarguments. These may have an approximately equal purpose, though not the same function.

Distinguishing from the functions and rights of other patents is the purpose of the formulations describing the object of a patent application.

New propeller constructions for ships are often produced. Is it imaginable that they should be refused patentation with reference to their use of the known physical principle "reactive force" or the known technical principle "production of a reactive force by acceleration of a fluid"?

Relative to the technical and practical possibilities of the patent application 1990 5214 is the U.S. patent 2,108,652 a specialized construction. It is made for propulsion in air, not for lifting. The application 1990 5214 also concerns lifting produced by blowing or flushing. A specialty is that the produced lifting force applied to aeroplanes is the technical condition of horizontal flight.

A vertical moment is produced during the first seconds of a flight, and thereafter a vector sum of an axial and a vertical moment. Moment is converted to momentum when the movement begins, as $Nm/Ns = m\ s^{-1}$.

The counterheld D2 does not imply that the air blowing should take place rearwards, which is a provision of 1990 5214. Its drawings of D2 show slits along the direction of movement, thus, by blowing at 90 degrees to the direction of velociy, letting the air be taken out of its relation to the surface of the wing and giving practically no contribution to the pressure lowering at the upper side of the wing.

D2 applied to ships is a mainly reactive or hydromechanical technology, unlike the applicants' method, which is based upon the negative pressure differential of a stream, thus a hydrodynamical function. NTNU's belief in reactive effect of streams along the side of the ship is not coherent with the actual physics, which will demand a reaction apparatus for exploiting any reactive force of the stream. The mental short-cut of NTNU can be understood by the empirical practice of science. The empirical specialty "marine hydrodynamics" is the limit and fence around what is measured in a towing tank and the calculations made from the measured phenomena. The measurements are made without regard to the physical functions of streaming water, thus to the fundamental conditions of ships' propulsion. These physical functions are not described by the measurements.

The flushing or blowing rearwards is one of the unique provisions of the patent application 1990 5214 which seems to have eluded NIPO and the Board. D1 and D2 are not efficient methods.

D1 (Coanda) is not intended for lifting, cf. its patenting papers, nor suited for it.

The photo of the applicants' test ship TY, with a displacement of 100 metric tonnes, shows one of the steps of its technical development, which is not yet terminated.

A consequence of the use of the method in aeroplanes will be that the runway will be superfluous.

Added to the avoidance of professional treatment comes NIPO's contempt of adminstrative regulations of its work, seen in the evasion of rules of conflict of interest, e.g. the exclusion from further engagement in a case of those who have already participated in a decision concerning it. A long-term examiner, T. Svendsen, had four times lost his competence due to the objective rules on conflict of interest. In spite of attention drawn to it, the complaint was not responded to, cf. the above mentioned letter of February 2 2006 from the law section of NIPO.

The letter of December 16 1996 from T. Svendsen was a general declaration of lack of competence for his task, followed through the years by the lack of the needed specific insight into problems mentioned here. The responsibility of the professional and administrative shortcomings of the examiners rests with the Director General of NIPO.

The correct parts of the treatment of the application are hard to find. The last argument of the examiner, June 30 2007, was scepsis. This word is used for the lack of knowledge combined with the lack of will to acquire knowledge. It is the least knowledgable of words.

Within any specialty, it is a necessity that the professional should know enough for posing the questions whose answers will bring him across the frontier between the unknown and the known.

For the possible reason of lack of internal communication in NIPO, a patent was granted to J. I. Eielsen, Fluma AS, for a security valve operating by the Bernoulli principle.

The lack of consequence with regard to principles shows that NIPO does not hesitate to violate its governing principles in order to produce results contrary to patent law. The correct part was granting the patent to Fluma.

The lack of understanding fluid flow and its physics led to a long-drawn, apparent examination, and a series of law-breaks.

The letter dated October 26 1999[9], was, according to the observations by the Kingdom of Norway, "not received by NIPO prior to the deadline November 5 1999..."; and the application was therefore shelved.

This letter was addressed to the director of NIPO and sent as registered mail, since NIPO communicated by registered mail; and receiving a message of the arrival on a certain date of a registered letter to the local post office should not be foreign to the secretariat of NIPO. This date is that on which the letter is at the disposition of the addressee, thus the date of arrival.

As the director made no move through two weeks to have the letter picked up at the post office in due time, the shelving of the letter had to become a case of the Ombudsman and the cause of twenty-two months of lost time. These twenty-two months were lost because one or several persons in NIPO did not care about their responsibilities. The ultimate responsibility is that of its director, i.e. Mr. J. Smith.

Impeding the application of the patent law is not the task of NIPO. Thus it does not have the option of using an apparently great distance from the known technology as a reason for denying a patent, cf. "Memorandum concerning Nordic Patent law, delivered by the cooperating Danish, Finnish, Norwegian, and Swedish committees", ("Betenkning angående nordisk patentlovgivning. Avgitt av samarbeidende danske, finske, norske og svenske komitéer") Oslo 1964.

In the memorandum, the evaluated descriptions of an invention are condensed into its technical character. The last period of this chapter (p. 102) is, however, this addendum:

> "*The character of the invention as having a technical effect and being reproducible is, presumably, an obvious part of the word invention.*"

[9] See the Government's observations, Appendix # 21

Maybe. This last sentence opens, however, for the possibility of restricting the technical character to a technical effect. This restriction is probably not intentional; though it produces the possibility of closing the perspective of the examiners to a narrowness obviously not intended by the authors of the memorandum.

In Norway, practice has, as seen, led to the exclusion from the class of technical effects nearly any effect not already known. This may be interpreted as a play of words. Within the administration of words, however, their significance rests upon reality and is resting heavily upon the social acceptance of reality. The application of patent law is one of social acceptance.

The mental weight of words is great enough for securing them a place in the perceived or imagined reality, at the cost of alternatives. A degree of consciousness is needed for realizing that the use of a certain word is not necessarily pointing to a defined reality, or to any reality.

From the relation between efficiency and novelty it is clear that a certain technology's distance from known technology is not a real argument against it, but a similitude of an argument used instead of some real argument.

The argument of a too low effect should be excluded as an argument against patenting, cf. the memorandum, p. 101, which underlines that even a technology producing a lower effect can be patentable.

An application for a patent does not only concern the patent, but implies the right to an unconditionally correct treatment and examination of the application.

NIPO's arguments have been changing between "not working by any known principle" (thus refusable) and "unknown principle" (thus not acceptable). These accidental words have been chosen as words for nearly two decades, though not for their meaning. The intention of their use has been refutation without considering the contents of the case.

The application has also been refused under reference to its lack of "known effect". This is a key point of mishandling by NIPO, whose problem has been the lack of understanding that new technology *is* possible, and that its novelty consists in its principle or essence being different from that of *known* technology.

It is impossible to describe a new technology as if it should work on the same conditions as the already known and have the same effects. The work of the examiner presumes that this impossibility is the conscious condition of everyday. The lack of this consciousness leads to the wrong belief that those new constructions not understood within the frame of the existant, have no right to be a part of accepted technology. This sabotage by the examiners is the death of a renewal of technology.

One part of energy saving is seen behind the applicants' ship. The sea behind the applicants' test ship TY is lying flat, which shows that no energy is used by a propeller for producing whirls. This loss factor associated with the propeller, disappeared at the applicants' construction. It is known at NTNU's faculty of marine technology as the inevitable "propulsion deduction fraction" induced by the propeller. In the technical literature and the current ships' construction, it is routinely calculated at 15-35 per cent of the axle power, depending upon the type of ship, cf. the enclosed copy from "Motstand og framdrift" (Resistance and Propulsion, 1988) by Professor Harald Walderhaug, NTNU.

In traditional shipbuilding, it is taken as an inevitable loss. In the textbook of naval engineering, from which the drawing is copied, there is no further mention of this dominating loss factor of ships. In slender ships, the loss descends to 15 per cent, though it is still important.

No other construction than that of the applicants' patent applications has drawn attention to this loss factor or a way to avoid it.

The treatment of this patent application has led to the nullifying of many years' qualified work. As it will have been seen from its own words, the responsible state organization has been working contrary to its purpose and to its legal conditions.

Several points of relevance to the evaluation of the effort of NIPO have been seen through the review of the examination of the patent application, the arguments used, the facts of the application responded to or overlooked, the answers delivered by the examiners, the Board of Appeals, and the responsible official.

A series of details are found on the preceding pages. They could be expected to be accidental defaults of review and evaluation. In that case, the defaults would have pointed in all directions.

Now, the arguments used by NIPO and the Board of Appeals in the decisions made, show, however, the deviations from a correct treatment of the application to be pointing in one direction, which is that of removing significance from the application and value from its theme.

The treatment is seen to have been NIPO's intentional and consequent avoidance of its duty according to patent law. It contains a series of infringements of patent law and administrative laws. Among the transgressions of fundamental principles of patentation and patent examination is the exclusion of the object of the patent application from the class of patentables.

As the infringements are all intentional and pointing in one direction, they should not be leniently considered as administrative blunders. They should be judged as that which they are: Intentional violations of the laws regulating rights of individuals and private societies within the realm of patents and public administration.

The application of industrial code and its ramifications into, e.g. patent law, is a part of the obligations of the state. We may presume that the maintenance of the belonging institutions and routines is a part of the daily functions seen as necessary for the continuation of society, with a certain room for development.

The systematic violation of rules is an illoyalty in private. State officials are engaged for performing defined parts of the state's services for society. Their iloyalty relative to their tasks is a revolt and a destabilizing of the state from its inside.

On the background of possible internal dysfunction, the state organs should have routines for checking its beginning. The responsibility for this control rests with the leader of each part of the state; and part of the task is the internal inspection and correction of routines, securing that the resources are used for their purpose, and that the tasks of the organization are performed in conformity with the actual laws.

When a dysfunction of the organization is brought to the ear of its leader, it is his duty to investigate and correct the case. An official has the responsibility of the legal working of his organization and of securing that the organization works according to its fundament of law.

Section B - comments by subject of the Government's observations

Domestic remedies have not been exhausted[10]
As accounted for under Section A, an application administered by NIPO (or complaints derived therefrom), is not subject to court review as long as the application is subject to proceedings by the said institution.

The Government argues that the applicants – who had "*...followed the NIPO proceedings closely over more than 19 years without taking any steps...*" – were free to file a lawsuit against NIPO as far as to try the legality of the proceedings as well as determining complaints of violations of the ECHR.[11] In this regard the Government refers to the Patent Act § 27, without further explanation. § 27 gives no legal authority to file such law suit either before NIPO or before the ordinary courts, hence the reference is of no use.

In his letter of February 12 1997[12] the Director General of NIPO responds as follows in regards to claims of errors in the proceedings:

> "*Should the final decision of your application be unfavourable, this decision can be appealed to the Board of Appeals.*"

It seems thus that even the Director General is of the opinion that the only way to challenge any errors in the proceedings is to file an appeal. The Director General has maintained this view ever since, and we thus refer to his letter to the police of February 20 2007, stating that:

> "*If the patent application is rejected...errors in the proceedings e.g. due to unnecessary long handling time could be plead as reason for a complaint to the appeal body.*" Please see appendix 5 (paragraph 4) to these observations.

This opinion is also maintained by the Ombudsman in his letter of March 22 2006.

Please find the letter attached to these observations as **Appendix # 2**.

The fact is that an applicant – who wants to complain against the administration of the matter/the proceedings – has no other choice than to hold his lawsuit until the Board of Appeals has passed its final decision, which both in theory and practice could take 20 years.

In its letter of March 28 2001[13] the Ministry of Trade and Commerce basically (and correctly) stated that complaints related to the administration of patent applications are subject to the provisions of the Patent Act, consequently overriding/displacing the Public Administration Act chapter VI (regarding complaints and reversal of decisions). The Patent Act and its relevant provisions are lex specialis.

Filing a lawsuit at any time while the application is under administration in NIPO, as suggested by the Government, would be futile as the court would have to reject such litigations pursuant to the Civil Procedure Act § 18-1 (pending actions).

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[10] Section 3 of the Government's observations of October 1 2010
[11] It seems that the Government suggests that an applicant can file a complaint on violation of the Convention before NIPO, although not taking into consideration that NIPO is in conflict of interest and thus is not competent to handle such complaints, besides not being a court, that is.
[12] See the Government's observations, Appendix # 16
[13] See the Government's observations, Appendix # 28

To sum this up: The applicants have filed numerous complaints[14] directly to NIPO in regards to the administration of the application. NIPO has found nothing wrong with its administration.[15] Not even the Ministry of Trade and Commerce revealed anything wrong with the administration of the application. On the contrary they found that NIPO had conducted their duties correctly and according to law.[16]

The Patent Act itself is clear: You are bound to hold your complaints until the Board of Appeals have passed their final decision, which, as mentioned, could take 20 years.

One should make note that NIPO is not a court in the meaning of the ECHR (or in the meaning of the Norwegian Court Administration Act §§ 1 and 2) and is thus not able in full to determine civil rights and obligations. Furthermore NIPO does not and can not[17] provide a civilian a fair and public hearing within a reasonable time as NIPO is not an independent and impartial tribunal established by law. Nevertheless NIPO is in fact what we are left with as far as regarding domestic remedies.

Make note that application # 23106/02 (Riis v Norway) was accepted and found admissible by the Court although domestic remedies obviously had not been exhausted. Should the applicants be left to try the case before the ordinary courts, we still claim that this would take years and that the result of such litigation at best would be a referral of the case to NIPO for a new examination, which in this case obviously would be futile due to the expiration of the 20-year protection.

Although the Norwegian courts are authorized to assess violations against the Convention, there is no tradition in Norwegian courts of processing such cases. Usually the courts will reject these claims. If one takes a look at the case law in Strasbourg, the Norwegian judge will normally concur with the Government, which should give the Court a pointer on how such claims would be assessed in Norwegian courts. The only remedy left, to put it like that, is thus to have the Court to assess the claims in question.

Finally under this paragraph we would like to remind the Court that up to ¼ of Norwegian judges are actually not judges, as they – for some reason – have refused to take the mandatory oath. This problem is already raised before the Court in another case against Norway (67154/10), and indicates that the said domestic remedies actually doesn't exist or exist only partly, depending on whether your case would be reviewed by a judge or by a person lacking the aforementioned oath.

"The application discloses no violations of Article 6 § 1 of the Convention" [18]
Under this section the Government basically states that although NIPO is partly responsible for the delay in question, the applicants bears the primary responsibility, hence some 18 years of handling a patent application is not unreasonable, consequently turning the complaint before the Court in Strasbourg manifestly ill-founded.

The Government relies on three main points in this regard: 1) The complexity of the case, 2) the conduct of the applicants and 3) the conduct of the authorities.

But first: While the Attorney General (the Government) by and large accepted the Court's Statement of Facts, the Government found it nevertheless "*...important to expand on the factual background of the case*".

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[14] See the Government's observations, Appendixes # 11, 12, 15, 18, 21 and 25
[15] See the Government's observations, Appendix # 16
[16] See the Government's observations, Appendix # 28
[17] Under the current regime with its limited laws and its boundaries
[18] Section 4 of the Government's observations of October 1 2010

Any deviation from the facts, omissions or misstatements of material facts voids the safe, accurate and fair evaluation of the merits of the case of which the Court is asked to carry out. Such conduct, if disclosed, must therefore be dealt with decisively and harshly.

I find it necessary to mention this by at least two reasons: 1) The Government has expanded the material of which the Court is to evaluate, to unnecessary proportions. Doing so – expanding the case by numerous unfounded allegations supposedly supported or confirmed by some 200 pages of mostly letters – requires a precise reference to the content of the given document, the relevance of the document, and what it is supposed to prove/support.[19] 2) The Government is "adding" information into the documents as well as omitting relevant letters.

Complexity of the case
Under paragraph 2.3 the Government spends approximately one page on describing the novelty search in general at NIPO. The Government follows up this under paragraph 4.2.2 (*complexity of the case*) stating that the average handling time until final decision was approximately three years, and that:

> "*...the general complexity of the search and patentability examination* (in this case) *account for a significant part of the total period (18 years)...*"

The fact is that between 1990 and 2001, NIPO did not carry out any novelty search,[20] at all, which is confirmed by statements made by NIPO in its letter to Mr. Kristiansen of August 30 2001,[21] see page 1, last paragraph, which states:

> "*It is correct that one didn't find it necessary to assess the application pursuant to the Patent Act § 2. The reason is that one didn't find that the application satisfies the Patent Act § 1, namely the paragraphs first sentence...this is the reason why we haven't carried out a novelty search.*"

The Patent Act § 2 regulates the terms in regards to the patent's inventive step or novelty, hence by this statement NIPO admits that the novelty search has not been carried out up to that point, i.e. comprising the first 11 years of the proceedings.

Reading the Board of Appeals' decision of November 14 2005[22] it becomes evident that the patent application had still not been subject to either novelty search or examination of its merits. This fact is further established by NIPO's letter of November 29 2005 to the applicants, stating that:

> "*Since this* (examination of the merits) *has not previously been carried out, this means that it* (NIPO) *will now undertake a full novelty search and examination on the merits of the application...*"

Please find the letter of November 29 2005 attached to these observations as **Appendix # 3**.

It should thus be safe to conclude that NIPO had not carried out either a novelty search or an examination of the merits of the application during the time that had lapsed from

[19] It turns out that the Government's arguments regarding the period of 1990 – 2001, and all enclosed documents supposed to support these arguments, are totally irrelevant, hence making Appendixes # 1 to # 35 appearing as "filler" drawing focus away from the simple facts in this matter. I will revert to this below.
[20] The first applicant notified NIPO about this in his letter of November 27 1996, cf. the Government's observations October 1 2010, Appendix # 12
[21] See the Government's observations, Appendix # 32
[22] See the Government's observations, Appendix # 36

1990 through November 2005, comprising the first 15 years of the proceedings. Consequently the Government's claim: "Complexity of the case", must fall to the ground.

The Government also argues that *the applicants* made the patent application (and the handling of it) complex. This malignant claim is unfounded and has no basis in the provided documentation. On the contrary, the documentation which the Government has provided the Court with, demonstrates and confirms 1) that the first applicant did what he possibly could to illuminate NIPO and to incite NIPO to speed up the proceedings, although in vain, and 2) that NIPO was on the wrong track for some 15 years, requesting an effect instead of carrying out novelty search and examination of the merits of the application. See further on this below.

We find it quite conspicuous that the Government – despite the apparent facts of which one can simply read from the documents – nevertheless persuasively argues that NIPO carried out the novelty search and examined the merits of the application, and that the novelty search was quite complex which allegedly was one of the main reasons for the extensive time of 18 years spent on the administration of the patent application.

The fact is that the novelty search and the examination of the merits of the application were carried out – briefly, and obviously still with no understanding[23] of the merits of the patent application – *after* November 2005, thus accounting for (at best) only three years of the handling of the patent application.

The applicants have for years claimed that there is something seriously wrong with the administration of this patent application. Let us thus take a brief look at how NIPO is avoiding liability. As documented above NIPO has stated that they – through 2005 – had not carried out any novelty search or examination of the merits. In a letter of August 8 2001 to the Ombudsman[24] NIPO turns 180 degrees and states:

> *"The application has been subject to examination of its merits... During the examination of the merits of the application no material/information has appeared that should justify a rejection based on lack of novelty or invention height."*

Some 22 days later NIPO declares the opposite, again.[25] NIPO's statement to the Ombudsman is an obvious lie, wilfully committed, for the sake of covering up its wrongdoings and thus avoiding liability. These actions show that the applicants' claims are justified.

Conduct of the applicants – The applicants are responsible for the time elapsed
Under paragraph 4.2.3 the Government argues that there has been a negotiation process between NIPO and the applicants during the "*...greater part of the total period to be taken into consideration*".

This statement is obviously not correct. As for the period from 1990 through November 2005 (15 years) there has been no "negotiation process" as described by the Government. During the said period NIPO basically repeated one request only: - Provide us with proof that this theory has a certain effect and we will try the case! That was it. This is moreover confirmed by the Government in its observations stating that:

> *"During all the period from NIPO's first letter 21 March 1991 to the refusal of the application 2 October 2001, NIPO maintained the same view; that the applicants*

[23] The fact that NIPO didn't and still don't understand the technical use of the principles mentioned in the application, becomes evident by reading Appendixes # 14, 20 and 32 of the Government's observations of October 1 2010
[24] See the Government's observations, Appendix # 30.
[25] See the Government's observations, Appendix # 32 mentioned above.

had not made probable the alleged technical effect of the invention and that they had to provide further evidence..."[26]

At best – if one can describe the correspondence between NIPO and the applicants *after* 2005 as negotiations – we are talking about a period of three years, from 2005 through 2008, i.e. comprising the last three years of the proceedings. It is thus a misleading and false statement declaring that this "negotiation process" accounts for the greater part of the total period. Again, these incorrect statements and evasive actions by the Government demonstrate that the applicants' claims are justified.

The Government furthermore argues that the applicants continuously fuelled the process with new submissions, stalling NIPO's attempts to ending the proceedings, hence being responsible for prolonging the proceedings.[27] Apart from being incorrect and false, the Government by this unfounded statement seems to touch the bottom of its willingness to state whatever is at hand – regardless of its truth content – in order to protect unlawful or criminal activity committed/carried out by state institutions.

During the first 15 years of the proceedings the first applicant tried his best to have NIPO understand the patent application (i.e. the novel technology), besides petitioning NIPO to speed up the process. And finally, after 15 years, the Board of Appeals did seem to have understood (or by the simple explanations was forced to understand) some parts of the invention as it partly accepted the technology as novel, pointing out that it would undoubtedly work and that NIPO was wrong pursuing their request of a certain effect for 15 years.

Despite the Board of Appeals' decision in 2005, NIPO continued to pursue its unfounded quest of efficiency. According to NIPO the theory would basically not work in water, and as for the use in air; the theory was (after 2005) not new, i.e. NIPO had out of the blue found that the theory would work in air, and that the technology was already patented.[28] Actually, the theory is the *same*, only working in different fluids; water and air. NIPO's decision – and its treatment of the case – shows that the technology has not been understood by NIPO, hence NIPO alone is responsible for causing this calamity. See further on this under Section A above.

As mentioned, the Government argues that the applicants are responsible for most of the time that has elapsed as they refused to comply with NIPO's unfounded requests for proof of a certain effect. Such requests are stated in NIPO's letters of March 21 1991, February 24 1995, December 16 1996, May 5 1999, August 8 2001, August 30 2001, October 2 2001 (decision).[29] Reading these documents it becomes evident that NIPO did not understand the technology and would not try the case should the applicant fail to provide NIPO with evidence of a certain effect.

NIPO's Board of Appeals' decision of November 14 2005,[30] basically states that NIPO was wrong in its requests, and NIPO's decision of October 2 2001 was hence quashed.

In this regard it is quite interesting to observe NIPO's statement in its letter of August 16 2005 to the applicants regarding another patent application (case # 2001 5844) which contradicts NIPO's requests in case # 1990 5214:

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[26] Page 14, 7th paragraph.
[27] See the Government's observations, page 14, 4th paragraph.
[28] Which of course is not correct.
[29] Respectively Appendixes # 2, 10, 14, 20, 32, and 34 to the Government's observations of October 1 2010.
[30] See the Government's observations, Appendix # 36

"An invention shall, however, preferably be characterized by its structural (constructive) characteristics, and indications of the effects should be left out/omitted."

Please find the letter of August 16 2005 attached to these observations as **Appendix # 4.**

One can conclude that the accounts given by the Government under paragraph 2.3 are irrelevant as for the assessment before the Court as NIPO – during the period referred to by the Government (November 30 1990 – February 10 2001) – solely and wrongfully requested proof of effect and for that reason did not carry out any novelty search or examination of the merits of the application. This – that NIPO was pursuing a wrong lead, was incompetent and did not carry out either a novelty search or any examination of the merits – is a conclusive fact. In this regard please refer to the following documents:

- Letter of December 16 1996[31] stating that four experts had found that the patent application was just a theoretical idea which would not work in practice.
- Letter of May 5 1999[32] stating on page one, second paragraph, that the patent application does not correspond with previous known theory.
- Letter of August 30 2001[33] stating on page 2, second paragraph, that this (not carrying out any novelty search hence not carrying out examinations on the merits) is normal procedure regarding these categories of patent applications and can thus not be considered as errors in the proceedings.

In the Board of Appeals' decision of November 14 2005,[34] the Board confirms that the application had not previously been subject to examination of the merits. In a letter of November 29 2005 NIPO refers to the Board of Appeals' decision and that the Board now had decided that the application was to be subject to examination of the merits. Subsequently NIPO admits and confirms that this had not previously been done:

"Since this (examination of the merits) has not previously been carried out, this means that it (NIPO) will now undertake a full novelty search and examination on the merits of the application..."

The Court should pay especial attention to the sudden (forced) change in NIPO's view of the application. Note that during a time span of no less than 15 years NIPO refused to accept that the technology would work. After 2005 NIPO turned totally around (in regards to the technology applied in air), this time arguing that the application could not be considered novel! I.e. NIPO jumped from a non-functional technology and unknown principle, to already patented and thus functional technology meeting in full NIPO's quest for an acceptable efficiency.[35] This huge leap was performed without any explanation.

In the light of the facts in this matter, the Government's observations appear as an obvious cover-up for some 18 years of institutional malpractice, filled with stingy and unfounded allegations, hence confirming that the applicants' claims are justified:

"The Government submits that the applicants have been given ample opportunity and advice...Having repeatedly failed to produce the required evidence...the

[31] See the Government's observations Appendix # 14
[32] See the Government's observations Appendix # 20
[33] See the Government's observations Appendix # 32
[34] See the Government's observations Appendix # 36
[35] Even though these patented technologies are far less efficient compared to the patent application in question

applicants are themselves responsible for the greater part of the total period to be taken into consideration."

Reading the documents the Government's representative has provided the Court with, it has been demonstrated that NIPO, hence the Norwegian Government, is responsible for 15 years of total, and – it seems – wilful passivity in regards to the administration of the patent application.

Consequently, as we have pointed out previously, the Government's arguments regarding the proceedings during the period from 1990 through 2005 is of no relevance. More important though is the fact that the Government is – for some reason – not referring to the truth when giving its account on what happened with the application during the said period of time.

Conduct of the authorities
The Government argues that the said delay (of at least 15 years) is unavoidable and that it should be noted that the applicants remained passive during the period. These malignant allegations, as for the aforementioned, are unfounded. The Government itself has documented through its observations that the applicants *did not* remain passive, quite on the contrary the first applicant did what one could possibly ask for from an applicant.

Let's take a brief look at NIPO's refusal to pick up its registered mail.[36] This deliberate delay accounts in itself for 22 months of waste of time. In this regard the Government claims that the first applicant is to blame for this delay, as he failed to produce evidence of an effect. As it turned out later on, in 2005, NIPO never had any legal reason for chasing this effect. The Government's claim thus falls to the ground.

The Government claims that NIPO couldn't have put an end to this case at an earlier point as it was obliged by law to secure proper administration of justice and in this regard made repeated efforts at guiding the applicants and thoroughly assessing the applicants' many submissions. As for the period from 1990 through 2005, this is – we must say – pure nonsense. During this period there was no guiding, nor was it any assessment of submissions. Take for instance the letter of December 18 1997 from NTNU. This letter was communicated to the first applicant August 30 2001 (44 months later) with the opinion that the application fell outside patent law, hence the executive officer had all reasons to reject the patent application and return it, which he obviously didn't. As repeatedly mentioned nothing happened during the first 15 years of the administration of the said application, as NIPO was wrongfully chasing an effect.

Having in regard what is stated and accounted for as well as documented above, the Government is solely responsible for 15 years of malpractice which caused the avoidable delay.

Patents are of understandable reasons more appreciated in the marked compared to a pending patent, hence a patent is obviously highly valued compared to an 18 year old pending patent application. Normally one will find it hard or even impossible to finance research and development costs of cutting edge technology lacking a patent. A pending patent is in this regard of insignificant value. Laws safeguarding infringements on pending patents are of insignificant value as well, and do not reduce the importance of a rapid patent decision as the Government though argue.

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[36] See the Government's observations, Appendix # 22 and onwards.

A few words need to be said in regards to the Government's references in its observations of October 1 2010. On page four (last paragraph) in the said observations, the Government refers to NIPO's letter to the applicant of December 9 1996 (appendix 13) and gives an account of its content:

> *"The delay was caused by an unfortunate combination of replacement of executive officers and an increasing number of applications and novelty searches in the period."*

The reference is incorrect and does not correspond with the content of the letter, as Mr. Smith did not mention an increase of novelty searches as an excuse for the period of time that had elapsed since the application was submitted in 1990.

On page one, (first paragraph) in NIPO's letter of May 5 1999,[37] the executive officer (Mr. Svendsen) apologized that the office hadn't responded sooner. He continued explaining the reason for the years that had elapsed:

> *"This is related to the work situation in the Patent office and that the certain category of which (the) application falls under at first was moved to another executive officer and then back again to the undersigned."*

The Government on the other hand refers to this letter as follows:

> *"The executive officer also apologized for the delay which was caused by the increased work-load in the area."*

As the Court will see, this is an incorrect reference to the content of this document, as the work-load was not at all mentioned as an excuse.

In his letter to the police of February 20 2007 the Director General of NIPO attempted to explain the reason for the extensive time spent on the administration of the case as follows:

> *"I would like to add that it is correct that the executive work of at least the oldest of the patent applications have taken a very long time. Part of this is due to that the case has been mislaid, of which the Patent Office previously has apologized for."*

Please find the letter of February 20 2007 attached to these observations as **Appendix # 5**.

Having in mind that NIPO did not carry out any novelty search and that it did not examine the merits of the application until 2005 at the earliest, and that the Director General of NIPO admits to the police that the application was mislaid (for years), the Government – by its observations of October 1 2010 and its striking attempts to cover up for NIPO's failure to act according to law – confirms that the applicants' claims are justified.

We have already mentioned in the applicants' complaint that one of the reasons for this malpractice is found in NIPO's own practice, where the institution has – among other errors – established systematic violations of the law. Please see the complaint page 7 for further elaboration on this.

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[37] See the Government's observations, Appendix # 20

"The application discloses no violations of Article 13 of the Convention" [38]
A holder of a patent application has – so far as all the conditions have been fulfilled – a right to be granted patent within a reasonable time after the submission of the application. Complaints against malpractice or errors during processing the application are strictly limited by the procedural regulations incorporated in the Patent Act. In worst case this means that an applicant could be facing 20 years of administration of his/her application, leaving a review of the matter before the traditional courts futile as the applicant's main purpose is to achieve a patent within a reasonable time in order to utilize his/her technology. As for the patent it goes without saying that a review of the matter in the courts is of no value, as even the courts has no competence to grant patent after 20 years have elapsed from the submission of the application.

Although Norwegian courts are – as the Government alleges – fully authorized to consider and determine complaints that involves violations against the Convention, these courts are nevertheless not competent[39] to redress a wrongfully quashed patent application (besides awarding damages).

Furthermore NIPO is not legally competent to assess claims of violations of the Convention. Should a patent application be subject of maltreatment and errors, the applicant is left with the rules of procedure regulated in the Patent Act which in practice leaves you with a system that in certain cases, as in this one, can not give redress. Thus the right to this specific patent and potential utilization of the technology, is lost, definitely. Please refer to what is stated on this question under paragraph 15.2 in the complaint.

Section C – Claims for just satisfaction

The dysfunction of the organization NIPO has been brought to the knowledge of its leader at several occasions in 1996 and later. Still, its practice has not been remedied.

Though the examiner was a main executor of the misuse of the rules of law, the director of NIPO is responsible for decisions made in its name. Specifically, he, as the official of the organization, is the guarantor of the base of law of the decisions made in the name of NIPO or the Board of Appeals, whether he has signed them or not.

The decisions were based upon thwarting and disregarding of the actual law. Their common character is that of contempt of law and responsibility.

The conduct of public servants and their official has placed NIPO in a position of responsibility wider and more severe than that relating to the application of patent law alone. The more severe consequences for the applicants resulting from the misinterpretation, misuse, disregarding and surpassing of the patent law's field of application have extended the responsibility of NIPO into the field of ch. 11 of the penal law, and to an economic responsibility.

It would be appropriate to recompense the damage on a level which will remind the responsible state, the responsible department and the responsible official of their duties, and of the extension of their responsibility to the whole of the organization.

The maltreatment has a wide perspective of practical and economic significance for the transport systems of the world. Their use of non-renewable resources is great, and any

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[38] Section 5 of the Government's observations of October 1 2010

[39] Normally a court – which is reviewing a final decision on rejecting a patent – will at best refer the matter back to NIPO for a new examination. It has been said that the court – in such cases – can by itself grant patent, but such a decision is extraordinary and highly unlikely.

potential reduction of it should be welcomed rather than refused. As the refusal has taken place by the illegal use of a Norwegian state organization on behalf of the Norwegian state, this is the responsible and should pay the damage. There is no excuse in the damage being done by subordinates. The responsibility of the use of resources and of the subordinates' following of law stays with the state and its official of NIPO.

The present damage concerns two branches of transport; shipping and aviation.

The practical importance of the method and its economic perspective is that of ninety per cent of the world's transport of goods taking place by ship. A corresponding part of the international passenger transport takes place by air.

Since the damage is great relative to the resources of any state, a fine would be symbolic. In order to use it for indicating the sphere of damage and its partial reparation, it should consist of three parts:

1. A world wide fund of 150 M€ for the development of ships' propulsion methods leading to energy saving,

2. A world wide fund of 150 M€ for the development of aeroplanes' propulsion methods leading to energy saving,

3. A recompense to TYVIK AS for its losses due to the unlawfulness of the work of NIPO.

TYVIK AS should be represented at the boards of the two funds; and it should have access to funding its research from them. Until the funds are established, TYVIK AS should be funded by a recompense of 3 M€ per annum so as to being able to pursue its development of propulsion methods retarded by NIPO.

Through much of the time from 1990 to 2008, the members of the Board of Tyvik AS were engaged, without pay, in the development of method and the performing of tests leading to the prototype ship TY and several patent applications.

The members of the Board are:

- Knut Graathen, mechanical engineer, MBA;
- Arne Hauglund, naval architect, B.Sc.(Hons.);
- Herman Berge, cand. jur.;
- Arne Wik Kristiansen, BA, chairman. As this degree does not specify relevant qualifications, these are better seen on the website www.peptider.no.

The value of the unpaid work invested amounts to 20 M NOK or *c.* 2.7 M€. This is a part of the value of the technical product of the research done, for which the firm's capital was used, cf. the test ship TY.

Finally: NIPO has deliberately fought the patent application. Due to NIPO's illegal actions the applicants have missed out on considerable income, earnings, developmental experience, growth and chances for success on a technology which has a substantial fuel saving prospective.

Punitive damages (exemplary damages)
NIPO and its Director General know the law, they have nevertheless calculated the risk of violating the law and decided to proceed with obstructing and slowing down the handling of the patent application, hence depriving the applicants of their right to a fair examination within a reasonable time.

A substantial punitive damages verdict is necessary to punish and deter NIPO from acting this way in the future.

If the Court finds from the evidence that the Government (NIPO) is guilty of wanton, wilful, malicious or reckless conduct that shows an indifference to the rights of the applicants, then I ask the Court to make an award of punitive damages in this case.

In order for the conduct of NIPO to constitute wilfulness or wantonness, their acts must be done under circumstances which show that they were aware from their knowledge of existing conditions that it was probable that injury/damage would result from their acts and omissions, and nevertheless proceeded with reckless indifference as to the consequences and without care for the rights of the applicants.

The Court must find that the harm to the applicants was the foreseeable and probable effect of NIPO's behaviour, but it is not necessary to find that NIPO deliberately intended to injure the applicants. It is sufficient if the applicants prove by the greater weight of the evidence that NIPO intentionally acted in such a way that the natural and probable consequence of their act was injury to the applicants. This has been proven. The conditions for claiming punitive damages are fulfilled, and I thus request the Court to make an award of punitive damages in order to prevent the reoccurrence of such conduct by NIPO.

The amount of punitive damages which will have a deterrent effect on NIPO/the Government in the light of the Government's financial conditions, and the seriousness of the said conduct, and which at the same time will approach the necessary recompense for the real loss, is set to **NOK 700 million**.

The applicant's claims

1. In regards to the patent application, domestic remedies have been exhausted.
2. Article 6 § 1 of the Convention has been violated.
3. Article 13 of the Convention has been violated.
4. The Norwegian Government should set up a world wide fund of € 150 million for the development of ships' propulsion methods leading to energy saving.
5. The Norwegian Government should set up a world wide fund of € 150 million for the development of aeroplanes' propulsion methods leading to energy saving.
6. Until the said funds are established, TYVIK AS shall be funded by a recompense of € 3 million per annum.
7. The Norwegian Government should recompense some NOK 20 million in regards to unpaid work invested into the company.
8. This court should award Punitive damages in the amount of NOK 700 million.
9. The Norwegian Government is to compensate the applicants €12.000,- in regards to legal costs and expenses before this Court.

Sincerely,

Luxembourg January 17 2011

Herman J Berge

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Norwegian Patent Office

To: **BILAG 1.**

Arne Kristiansen
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Company
Registration Number
NO 971526157

Annen avd. sak. nr.: 7230
Patentsøknad nr.: 1990 5214
Søknad gjelder: Fremdriftsanordning for fartøyer
Søker: Arne Kristiansen

Saken har vært behandlet i 2. avdelings møte den 13. september 2004, og utvalget er kommet til at søknaden formodentlig vil kunne føre frem med en noe annerledes utforming av kravene.

Utvalget finner det klart at vilkårene for patenterbarhet, nyhet og oppfinnelseshøyde, jf. patentloven § 2 første ledd, ikke er tilstede for fremdriftsanordning til bruk innen luftfart og seiling. De strømningsprinsipper og de effekter nærværende krav bygger på er velkjente fra disse områder.

Det kan eksempelvis vises til ulike encyklopediske og tekniske orienterte nettsteder (websites) på internett hvor det i detalj redegjøres for de aktuelle naturlover / prinsipper og hvordan de er blitt og blir utnyttet innen teknikkens verden. Vedlagt følger en kort oversikt som viser adressen til noen slike nettsteder, og hva de inneholder av informasjon som det er aktuelt å benytte som mothold i dette konkrete tilfellet.

Nyheten synes i denne saken alene å referere til den effekt som kan påvises ved strømming av et medium over de delen av et skips-/båtskrog som ligger under vann(linjen).

For et mer begrenset område innen sjø-/skipsfart finner man således at søknaden nok kan føre frem. Dette forutsetter at det foretas slike begrensninger og presiseringer i kravene at det klart avgrenses mot nettopp luftfart og seiling, som er omtalt ovenfor.

Patentkravene foreslås positivt avgrenset til sjø-/skipsfart, ved at ordet "fartøyer" tilføyes prefikset "sjø-", samt at presiseringen "så som skip og luftfartøyer" fjernes helt. Videre anser utvalget det helt nødvendig å legge til en presisering i kravene i tilknytning til betegnelsen / uttrykket "en flate av fartøyet", som gjør det klart at nevnte flate på sjøfartøyet (helt) må ligge under vann(linjen). Som en konsekvens av ovenstående må det uselvstendige krav nr. 7 fjernes helt.

Etter at de nødvendige endringer er utført skulle kravene kunne se omtrent slik ut (tilføyelser er markert med fet skrift og tekst som må fjernes helt er satt i kursiv og innen firkantklammer):

1. Anordning for fremdrift, styring, bakking, bremsing og løft av **sjø**fartøyer, [*så som skip og luftfartøyer,*] k a r a k t e r i s e r t v e d at det ved en flate av fartøyet, **(be)liggende under vann(linjen),** som vender i retningen for fart, bremsing eller løft er anordnet dyser for frembringelse av en flat, tynn mediestrøm på tvers eller tilnærmet av tvers av retningen for bevegelse eller løft nær inntil nevnte flate.

2. Anordning i følge krav 1 for styring av **sjø**fartøyer, [*så som skip og luftfartøyer,*] k a r a k t e r i s e r t v e d at det ved de fremre og aktre sideflater av fartøyet er anordnet dyser for frembringelse av en flat, tynn mediestrøm på tvers eller tilnærmet på tvers av den ønskede rotasjons- eller translasjonsretning nær inntil de nevnte flater.

3. Anordning ifølge krav 1 for bakking og bremsing av **sjø**fartøyer, [*så som skip og luftfartøyer,*] k a r a k t e r i s e r t v e d at det ved en flate av fartøyet som vender fra fartsretningen er anordnet dyser for frembringelse av en flat, tynn mediestrøm på tvers eller tilnærmet på tvers av retningen for bakking og bremsing nær inntil nevnte flate.

4. Anordning i følge krav 1 for helt eller delvis løft av **sjø**fartøyer, [*så som skip og luftfartøyer,*] k a r a k t e r i s e r t v e d at det ved en eller flere deler av fartøyets flate eller tilnærmet flate overside er anordnet dyser for frembringelse av en flat, tynn mediestrøm akterover og på tvers av retningen for løft nær inntil nevnte flate eller tilnærmet flate del eller deler av oversiden.

5. Anordning i følge krav 1 for bidrag til helt eller delvis løft i samsvar med krav 4 av **sjø**fartøyer, [*så som skip og luftfartøyer,*] i fart, k a r a k t e r i s e r t v e d at det ved en flate av fartøyet som vender nedover er anordnet dyser for frembringelse av en flat, tynn mediestrøm mot fartsretningen og på tvers av retningen for løft nær inntil nevnte flate.

6. Anordning i følge krav 1 for bidrag til fremdrift i samsvar med samme krav av **sjø**fartøyer, [*så som skip og luftfartøyer,*] k a r a k t e r i s e r t v e d at det ved flater av fartøyet som vender fra fartsretningen er anordnet dyser for frembringelse av en flat, tynn mediestrøm mot retningen av den lokale komponent av mediestrømmen nær inntil nevnte flater.

Til å besvare dette brev, samt å innsende nye krav, innrømmes De en frist på to - 2 - måneder fra brevets dato.

De må være forberedt på at saken kan bli tatt opp til avgjørelse på det grunnlag som foreligger ved svarfristens utløp.

Med vennlig hilsen

Oluf Grytting Wie

Oluf Grytting Wie

Her anbefalt
henvisning til
pl. § 27, 3. ledd,
jfr. 4. ledd.

Loven av 1910, § 7, 2. ledd,

Sivilombudsmannen
Stortingets ombudsmann
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BILAG 2.

Tyvik AS
v/Herman J Berge
Einerveien 61
1405 LANGHUS

SIOM

Vår referanse	*Deres referanse*	*Vår saksbehandler*	*Dato*
2006/533		Eva Grotnæss Johansen	22.03.2006

PATENTSAK

Det vises til Deres brev 13. mars 2006, med vedlegg.

De klager over Patentstyrets tildeling av saksbehandler i sak om patentsøknad. De anfører at saksbehandler Trygve Svendsen ved Patentstyrets første avdeling er inhabil på grunn av hans tidligere befatning med saken som saksbehandler.

Deres klage med vedlegg har vært gjennomgått og vurdert her.

./. Ombudsmannens kontroll med forvaltningen skal normalt skje i ettertid, dvs. at et spørsmål normalt ikke kan bringes inn for ombudsmannen før saken er endelig avgjort i forvaltningen, jf. vedlagte orientering om ombudsmannsordningen side 7. Det antas at De ved et eventuelt nytt avslag i Patentstyrets første avdeling har rett til å klage saken inn for annen avdeling. Ved en slik klagesak vil De kunne ta opp eventuelle feil De mener hefter ved saksbehandlingen i første avdeling, herunder spørsmålet om habilitet. Det er derfor ikke grunnlag for ombudsmannen til å ta saken opp til nærmere undersøkelse nå.

For ombudsmannen

for Berte Kristiansen
Harald Gram
kontorsjef

Eva Grotnæss Johansen
Eva Grotnæss Johansen
førstekonsulent

Vedlegg

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VAREMERKE
DESIGN
PATENT
FORUNDERSØKELSE
KURS OG FOREDRAG

BILAG 3.

TIL:
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DIREKTE TELEFON:	VÅR REF.:	DERES REF.:	DATO (ÅÅÅÅ.MM.DD):
22387507	19905214		2005.11.29

Svarfrist : **2006.05.31**
Søker : Arne Kristiansen
IPC-klasse : B63H

Uttalelse i patentsøknad nr. 19905214 (må oppgis ved svar[1])

Grunnlag for uttalelsen:
Med avgjørelse av 2005.14.11 har Patentstyrets 2.avdeling besluttet at søknaden skal tas opp til realitetsbehandling i 1.avdeling. Da dette ikke tidligere er gjort, betyr at det nå skal foretas en full nyhetsgranskning og realitetsbehandling av søknaden slik den forelå ved den ovennevnte avgjørelse. Av 2. avdelings protokoll, fremgår det at søkeren ikke har vært villig til å endre noe på de opprinnelige krav. Det er derfor disse som nå legges til grunn for patenterbarhetsvurderingen. Dette gjelder beskrivelse og patentkrav innsendt til Patentstyret den 1990.11.30. Det foreligger ikke figurer i søknaden.

Konklusjon:
Søknadens krav 1 kan ikke ses å inneholde noe patenterbart nytt. Søkeren gis mulighet til å sende inn forslag til et nytt kravsett innenfor rammen av basisdokumentene.

Resultater fra nyhetsgranskningen:

D1.	US	A	2108652
D2.	US	A	3779199
D3.	US	A	4283179

Vurdering av patenterbarhet:

Nyhet
D1 viser en fremdriftsinnretning der en sirkulær skive med buet overflate som vender i retning av løft/bevegelse. Innretningen er forsynt med koaksiale spalter der en tynn, flat mediestrøm presses ut nær flaten, på tvers eller tilnærmet på tvers av retningen for løft/bevegelse.

Oppfinnelseshøyde
D1 er nyhetshindrende for gjenstanden ifølge krav 1 hva angår fremdrift og løft av luftfartøyer. Likeledes må det prinsipp for fremdrift/løft som angis i søknaden anses å være nyhetshindret av D1.

[1] Skriftlig svar må være innkommet til Patentstyret innen ovennevnte frist. Unnlater søkeren å avgi uttalelse eller foreta handling for rettelse av anmerket mangel innen fristens utløp, vil søknaden bli henlagt, likevel med mulighet for gjenopptagelse, jf. patentloven § 15 og avgiftforskriften § 19. Det kan skriftlig begjæres fristforlengelse. Begjæringen må være innkommet til Patentstyret innen fristens siste dag.
Patentloven, avgiftsforskriften og nærmere regler for fristforlengelse finnes på Patentstyrets hjemmeside, www.patentstyret.no

Spørsmålet er da om de utførelsesformer som ellers angis i kravene inneholder trekk av patenterbar art, ved at de i så fall må anses å skille seg vesentlig fra den aeroteknikk D1 presenterer. Som søkeren selv legger opp til i søknaden, er det store likheter mellom strømningsteknikk i vann og luft, og flere av de samme fysiske prinsipper kan benyttes begge steder, noe anvendelsen av Bernoullis prinsipp både i vann og i luft klart viser. Krav 1 kan derfor ikke ses å tilfredstille PL § 2, 1. ledd angående oppfinnelse når prinsippet som angis i kravet er kjent, og kravet ellers ikke angir spesifikke, konstruktive trekk som skal tilpasse søknadsgjenstanden til bruk enten i luft eller i vann.

Hva angår kravene 2 til 4, angir disse bare spesialtilfeller av krav 1, der den naturlige plassering av dyser for å få henholdsvis styring, bakking og løft er generelt angitt. Vi kan ikke se at dette inneholder noe patenterbart.

Når det gjelder kravene 5 og 6 angir disse tilleggstrekk for henholdsvis løft og fremdrift. Utslipp av mediestrømmer for blant annet å få øket fremdrift/løft, er kjent fra D2 og D3.

Krav 7 angir et spesialtilfelle vi ikke har funnet kjent.

Formelle mangler:
Det foreliggende kravsett er satt opp som 7 selvstendige krav av samme kategori (anordning) Antallet selvstendige krav skal normalt være begrenset til ett selvstendig krav i hver kategori, jf. PR 3.1.2, 1. punktum. Vi kan ikke se at det er behov for et oppsett med flere selvstendige krav, i stedet for det normale oppsett, med ett hovedkrav og flere uselvstendige krav som angir utførelseseksempler på det som angis å være oppfinnelsen ifølge det selvstendige krav.

Pålegg:
Dersom søknaden ønskes opprettholdt, må dette skje i nytt kravsett der det som angis som nytt, skiller seg vesentlig fra det som er trukket frem av mothold i saken.

De foremelle manglene må rettes opp, og søkeren må påse at det ikke tas inn nye, reelle trekk i forhold til de som fremgår av beskrivelse og krav av 1990.11.30.

Med hilsen

Trygve Svendsen

Vedlegg: *Granskingsrapport, motholdte publikasjoner*

ONSAGERS AS
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Frist notert:

Annen avdeling

BILAG 4

Onsagers AS,
Oslo

Annen avd. sak nr. **7300** **Dato:** 2005.08.16
Patentsøknad nr. 2001 5844
Søkere: Arne Kristiansen og Tyvik AS
Fullmektig: Onsagers AS

Vårt ref. nr. **7300**
Deres ref.: **P16758NO00/HE**
Att. **Lars-Fredrik Urang**

Det vises til innlegg av 4. mai 2005.

Annen avdeling forstår det slik at søker ikke ønsker at behandlingen av nærværende sak skal stilles i bero i påvente av utfallet av 2. avdelings sak nr. 7230.

Den etterspurte protokoll fra muntlig forhandling 2. februar d.å. vedlegges til Deres orientering. Samtidig vedlegges en liste over de motholdene som ble overlevert i møtet.

Som det fremgår av protokollen, bør hovedkravets ingress reflektere det som var kjent fra søkers første søknad. Videre bør det klargjøres hvori det nye og oppfinneriske ligger. Annen avdeling har ikke gitt uttrykk for at betegnelsene "legeme" eller "kant" er så uklare at de ikke kan benyttes i patentkravet. Problemet er snarere at begrepene er så omfattende at de ikke i tilstrekkelig grad distanserer oppfinnelsen fra det som var kjent fra før. Slik hovedkravet nå er formulert, omfatter det legemer av enhver form og for enhver anvendelse, f.eks. en skipsside eller en flyvinge. Og røret med dysene kan plasseres ved en hvilken som helst kant av legemet, f.eks. i fremkant av skipssiden (baugen) eller av flyvingen. Med en så vid formulering, kan utvalget ikke se at oppfinnelsen kan sies å skille

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seg vesentlig fra det som var kjent fra før, verken fra søkerens tidligere søknad eller fra det som var kjent fra luftfartsområdet. Plasseringen av dysene i et rør anses som en rent fagmessig tilpasning av kjent teknikk. Det kan derfor ikke påregnes at søknaden vil føre til patent.

Det påpekes videre at det foreliggende hovedkrav inneholder flere henvisninger til de virkninger som søkes oppnådd. En oppfinnelse skal imidlertid fortrinnsvis karakteriseres ved sine konstruktive trekk, og virkningsangivelsene bør derfor utgå.

Søker gis med dette en siste frist på 2 måneder til eventuelt å inngi nye patentkrav og eksempler som viser oppfinnelsens utøvelse på luftfartsområdet. De må være forberedt på at saken tas opp til avgjørelse ved fristens utløp.

Med vennlig hilsen

Oluf Grytting Wie

Oluf Grytting Wie
Seniorrådgiver

BILAG 5.

08,02

PATENTSTYRET
Styret for det industrielle rettsvern

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Vedr. anmeldelse

1. Jeg viser til telefaks datert 19. februar 2007. Som vedlegg fulgte kopi av brev fra firmaet Tyvik AS til Riksadvokaten, der undertegnede som Patentstyrets direktør anmeldes for overtredelse av strl §§ 123, 125 og 324, som alle dreier seg om misbruk av offentlig myndighet. Dessuten bes det i brevet om etterforskning av mulig medvirkningsansvar for lederen av Patentavdelingen, lederen av Patentjuridisk seksjon og vedkommende saksbehandler i Patentavdelingen.
2. Som grunnlag for anmeldelsen påstås øverst på side 3 i brevet straffbar trenering av behandlingen av to patentsøknader som anmelderen har under behandling i Patentstyret. Som overordnet ansvarlig for Patentstyrets virksomhet skal jeg ha unnlatt å sørge for "at de ansatte i Patentstyret er tilstrekkelig informert om de legale, faglige og administrative premisser for sitt arbeid, og å unnlate å se til, ved hjelp av administrative rutiner og en adekvat arbeidsledelse, at Patentstyrets oppgaver fylles innenfor loven og innen rimelig tid". Hovedpåstanden er fulgt opp av en rekke underpåstander med knappest mulige begrunnelser.
3. For undertegnede er det vanskelig å se noe grunnlag for eller i det hele tatt forholde seg til anmeldelsen. I henhold til strl § 123 er det et krav at "nogens Ret" må være krenket. Foreliggende søknader er ennå ikke avgjort. Tvert imot er førsteinstansens avslag i begge søknader opphevet i klageinstansen, og sakene er tilbakesendt førsteinstansen for videre behandling etter nærmere anvisning. Vilkåret om en etablert rettskrenkelse synes derfor ikke å være oppfylt.
4. Jeg vil likevel tilføye at det er riktig at behandlingen av i hvert fall den eldste av patentsøknadene har tatt særlig lang tid. Noe skyldes en forleggelse av saken, som Patentstyret tidligere har beklaget. Man skal imidlertid være klar over at behandlingen av en patentsøknad etter sin art er en tidkrevende prosess. I særlig grad gjelder det søknader om patent på oppfinnelser som utfordrer grensene for hittil kjente tekniske prinsipper, og der det blir stilt krav om dokumentasjon gjennom nye forsøk, testinger og analyser. Tiden som er gått, vil imidlertid bli kompensert ved at patentvernet gis tilbakevirkende kraft dersom patent blir gitt. Dersom patent blir

Des 96
Jan 97

Patentstyret

nektet, vil både spørsmål om mulig feil utøvet skjønn og saksbehandlingsfeil, f.eks. på grunn av unødvendig lang saksbehandlingstid, kunne anføres som grunn for ny klage til klageinstansen.

5. Søkeren er gjennom den omfattende søknadsbehandlingen gitt rikelig anledning til å fremføre sine argumenter både skriftlig og muntlig. I klageinstansen ble det til og med holdt en særlig muntlig forhandling, der klageinstansen i tillegg til teknisk ekspertise var representert ved noen av våre fremste eksperter på patent- og konkurranserett, nemlig professor dr. jur. Are Stenvik og professor dr. jur. Olav Kolstad. Det har således formodningen mot seg at saksbehandlingen her ikke skulle være forsvarlig.

6. Undertegnede vil se til at behandlingen av foreliggende søknader også får en avslutning i henhold til gjeldende lover og regler. Nøytralitet og saklighet er viktige prinsipper i vår saksbehandling. Søkeren vil selvsagt ha anledning til å bruke de samme rettsmidler mot en avgjørelse som går ham imot som enhver annen søker. Lovens system er at det ordinære rettsmiddelet er klage til klageinstansen (Patentstyrets 2. avdeling). Jeg regner med at også påtalemyndigheten vil være interessert i å bidra til at bruk av straffeprosessen som middel til å fremme en parts interesser i en forvaltningssak bør være begrenset til de alvorlige tilfellene av myndighetsmisbruk, og ikke som et tilsynelatende tilfeldig og emosjonelt preget innspill i den ordinære saksbehandlingen. Jeg ber derfor om at foreliggende anmeldelse henlegges.

7. Jeg står selvsagt til disposisjon for ytterligere spørsmål eller informasjon.

Med hilsen

Jørgen Smith
Direktør