

**MASTER PROGRAMME
EUROPEAN
INTELLECTUAL PROPERTY LAW
MODULE 1
2009**

HOME EXAM

You are not supposed to have special knowledge of national law for the purpose of the exam. You should, thus, give your answers with references to European directives and regulations and, if relevant, to European and international conventions/treaties.

**Send the assignment to Aron Verständig
by mail or fax
before 9:00 am (Swedish time)
on March 31, 2009**

Name the file after your last name!

Mail: aron.verstandig@juridicum.su.se

Fax : +46 8 612 41 09

Your task

Your task is to write a memorandum of law that identifies the legally significant facts and legal issues, references the relevant sources of law, applies the law to the relevant operative facts, and draws logical and well-documented conclusions.

The memorandum should cover the questions in the last paragraph, be objective and should identify both the strengths and weaknesses of your conclusions. Any further legally relevant observation is welcome! Each issue should be treated separately. Excessive overlapping of thought in the discussion indicates that you have not identified the issues with sufficient precision.

The teaching staff will take into consideration both the substantive treatment of the facts and issues as well as the more formal aspects of the memo, namely, the correct treatment of sources, the use of clear and concise legal language and brevity. Do not exceed 5000 words!
Good luck!

Marianne Levin
Stockholm, 27 March, 2009

HOME EXAM 2009

In 2003 the Swedish company CAREAB, which is active in the field of various assisted living products (handicap help tools), decided to produce a smart and carefully designed toilet elevator, which was to be marketed as HIGH LOLO. The work was led by their chief designer Herbert Gold, who was responsible for the development of the HIGH LOLO design. As a first step and due to the fact that they were enthusiastic about this name that came up during various planning discussions, they immediately registered this name as a CTM. The HIGH LOLO toilet elevator was later first presented at a trade fair in Copenhagen in March 2007. The presentation took place in a special conference room for invited key guests, numbering about 25 persons. After the presentation of HIGH LOLO the guests were requested to leave the presentation materials in the room.

However, at this fair another Swedish company, CAREAB's competitor REHAB, told them that they had heard about HIGH LOLO and claimed that there might be a risk of infringing REHAB's patented technology to a toilet elevator. The REHAB patent had been published in 1992 as EP0486450. It concerned in abstract:

"An arrangement for detachably holding seats (2) to the bowls of water-flushed toilets and comprising a number of arms (10) which can be adjustably attached to the underside of the seat (2). The free outer ends of the arms (10) are provided with pins (11) which can be locked in positions against the outside of the bowl rim of the toilet when the seat (2) is placed in position on the bowl. The arms (10) are pivotally mounted and can be locked in selected positions. The pins (11) are provided with a sleeve (12) of rubber or plastic material which generates a frictional force in contact with the toilet bowl. The arms (10) pivot around a screw (19) which is screwed into the underside of the toilet seat (2) and which in one position enables the arm (10) to be adjusted positionally and in another position locks the arm. The head (20) of the screw (19) is preferably covered with a coating (23) of rubber or plastic material and forms a cushion which rests on the toilet bowl when the toilet seat (2) is in its position of use."

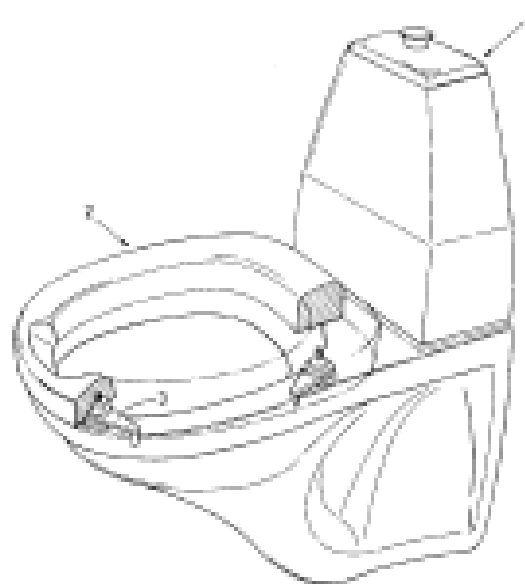


Fig 1

Even if CAREAB was somewhat astonished over REHAB's allegations and was pretty sure of HIGH LOLO being a new and advanced concept both in view of a very attractive and powerful design and a new technological approach, they did not want to reveal the HIGH LOLO design or technology to their competitor. But nor did CAREAB want any trouble at this crucial marketing stage. Therefore, CAREAB found it better for safety reasons to acquire a licence for the Swedish market to REHAB's patented technology in order to eliminate any risk in connection with the launching of HIGH LOLO.

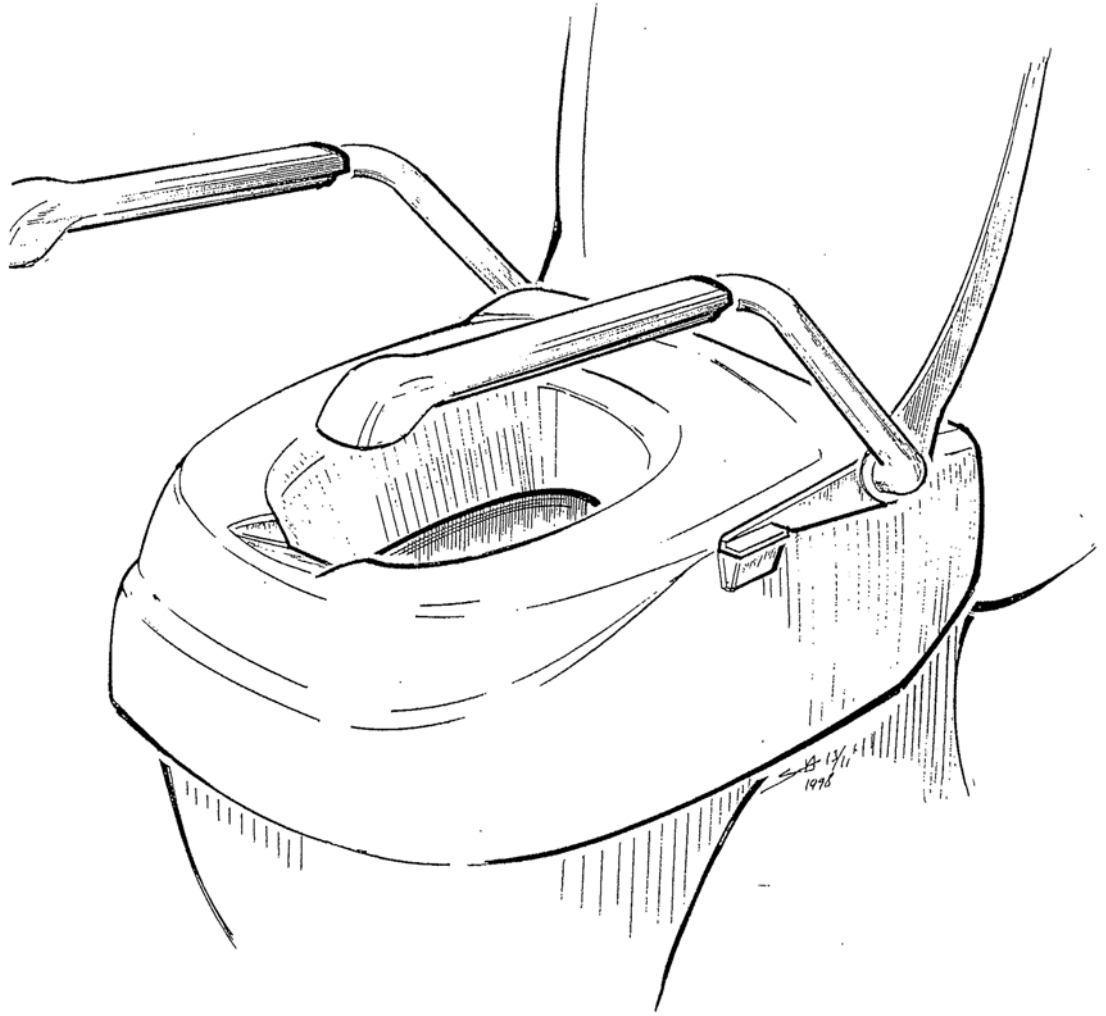
HIGH LOLO differed to the prior art seat elevators. These merely sit on the bowl or are attached by clips, so as to be removed for cleaning, and tend to be unstable in use. Especially in view of the limitations of persons disposed to use toilet elevators, stability and security are of primary importance. Nor did HIGH LOLO have the serious drawback of the conventional elevators by being permanently attached to the bowl. HIGH LOLO was easily adjustable and could thus be adapted to the various sizes and configurations of the bowls. It was easily attached to or removed from a bowl so as to simplify cleaning.

Nevertheless, 2007 was not a successful year for CAREAB. Not only did they have to pay a considerable sum to the competitor REHAB for the patent licence, but they were also forced to postpone the launching of HIGH LOLO when some key staff left the company and joined REHAB instead. At the same time the chief designer left and started a business of his own. After some reconstruction to the company a fresh new start for HIGH LOLO was prepared for late 2008. Finally, all their troubles should have been solved. With HIGH LOLO CAREAB would get a good and reliable profit maker. The design was exquisite and they had some obvious technological advantages. It was thus with high expectations that CAREAB in December 2008 started to present and market HIGH LOLO on their website, www.highlolo.nu with inter alia the device: "Almost in heaven with HIGH LOLO." Prices were mentioned in SEK, EUR, NOK and GBP.

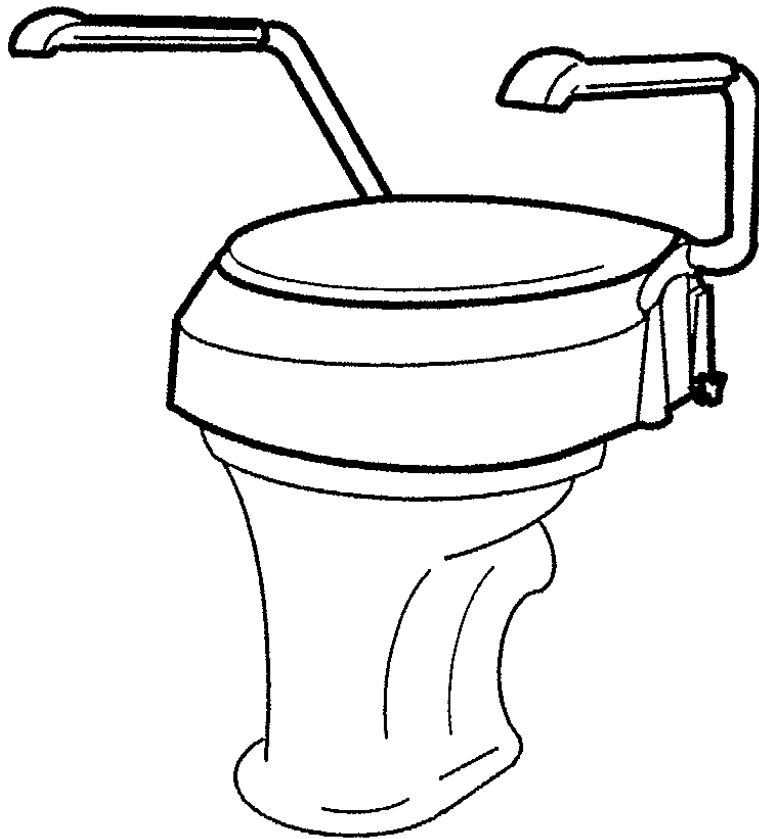
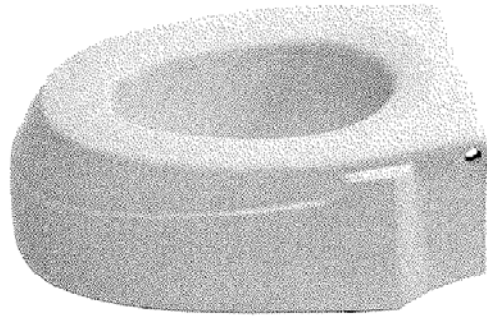
Having done so, again to their astonishment they got a warning letter from REHAB, who naturally acknowledged that CAREAB had acquired a patent licence to the technology, but this licence did not include the use of their protected design. REHAB referred to their CID for LOHIGH, which had been registered in December 2007 when they also applied for HIGHLO as a CTM. Furthermore, the patent licence was only for Sweden, and CAREAB now marketed HIGH LOLO on the website to an international public.

Indeed, CAREAB now realized that instead of HIGH LOLO making them famous in the assisted living market, their precious crown jewel to be, just caused troubles. But how could it be that a CID for LOHIGH already existed with very small differences to HIGH LOLO's design? The strange thing about this was also that the designer mentioned on the CID was Herbert Gold. It was also strange that REHAB's name of their product had such similarities with CAREAB's CTM. When Herbert Gold was confronted with the accusation of double sales, he just claimed that the designs were different and that the similarities mainly were in regard to the handles, which were not decisive for the overall impression and which he had designed long before he joined CAREAB. In addition, he insisted that he was the owner of the copyright and that he could make the changes to the design that he wanted.

CAREAB is a fairly small company with very limited resources. They need some good advice on the legal situation with regard to copyright, design rights, patent rights and trademark rights. Where do they stand? What claims could they have? What threats or weaknesses should they prepare for? Where and under which law could they possibly expect to be sued, and where should they themselves, if at all, file complaints?



HIGH LOLO



CID No. XXXDCM (LOHIGH)