

PATENT ASSIGNMENT COVER SHEET

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SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	COURT ORDER
CONVEYING PARTY DATA	
Name	Execution Date
CONNY GUSTAVSSON	10/30/2020
HASSE HULTMAN	10/30/2020
LARS LINDEN	10/30/2020
JIM FROLANDER	10/30/2020
RECEIVING PARTY DATA	
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City:	STOCKHOLM
State/Country:	SWEDEN
Postal Code:	12647
PROPERTY NUMBERS Total: 2	
Property Type	Number
Patent Number:	10422088
Patent Number:	9850629
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DATE SIGNED:	05/28/2021
Total Attachments: 17	

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SÖDERTÖRN DISTRICT COURT

JUDGMENT

2020-10-30

Rendered in
Huddinge

Case No

T 7977-19

PARTIES

Plaintiff

Husqvarna AB, 556000-5331

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Counsel: Lawyers Therése Isaksson and Siri Alvsing

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JUDGMENT

1. The district court orders that the patents and patent applications listed in appendix 1 which were transferred from Opus 3 AB (556625-7696) to DellCron Innovation AB shall be returned to the bankruptcy estate of Opus 3 AB.

2. DellCron Innovation AB shall reimburse Husqvarna AB for litigation costs of SEK 990,306 plus interest in accordance with Section 6 of the Swedish Interest Act from the date of the judgment until the sum is paid in full.

1. BACKGROUND

1.1. Opus 3 AB (Opus), formerly with the company name DellCron AB, has had a collaboration with Husqvarna AB (Husqvarna). After the collaboration ended, the companies have been involved in several disputes concerning, among other things, patents and patent applications. In a judgement on May 2, 2018, the Patent and Market Court decided that Opus' action regarding better right to certain inventions should be rejected and that Opus should reimburse Husqvarna for legal costs of just over SEK 3 million plus interest (PMD case no. PMT 14315-15).

1.2. Opus was declared bankrupt on May 18, 2018.

1.3. Hui-Ling Chen has been a board member and Hans Hultman has been a deputy board member in the company Opus. They currently have the same roles in the company DellCron Innovation AB (DellCron Innovation). DellCron Innovation previously had the company name Micro Trenching Technology AB (MTT).

2. REQUEST AND POSITION

Husqvarna

2.1. Husqvarna has requested that the district court shall order that the transfers of patents and patent applications listed in Appendix 1 to this judgment and made from Opus to DellCron Innovation on the dates specified therein shall be returned to Opus' bankruptcy estate.

2.2. Husqvarna has claimed compensation for its litigation costs.

DellCron Innovation

2.3. DellCron Innovation has disputed Husqvarna's request.

2.4. DellCron Innovation has claimed compensation for its litigation costs.

3. GROUNDS

Husqvarna

3.1. Opus has held the patents and patent applications listed in Appendix 1 to this judgment (the Patent Rights). The Patent Rights have on different occasions from May 25, 2012 through February 13, 2018 been transferred from Opus to DellCron Innovation. The transfers have been made without DellCron Innovation paying any compensation for the Patent Rights. The transfers have occurred on the dates set out in Appendix 1 of this judgment. If

they had not been transferred, the Patent Rights would have constituted assets in Opus' bankruptcy estate with a not insignificant value. Through the transfers, the Patent Rights have been withheld from Husqvarna. Through its claim for legal costs, Husqvarna is a creditor of Opus' bankruptcy estate. The Patent Rights have thus, through the transfers, been withheld from at least one creditor.

3.2. The purpose of the transfers was to exclude the Patent Rights from the bankruptcy proceedings and that operations could be continued in another company that owned the Patent Rights. The Patent Rights have thus been transferred for the purpose of circumventing the consequences of a bankruptcy. The transfers were therefore, in view of the course of events in their entirety, improper and invalid.

3.3. Opus became insolvent by transferring the Patent Rights. The reason for the insolvency was that Opus divested the Patent Rights at the same time as Opus incurred costs for litigation conducted by Opus. The date of insolvency likely occurred in October 2014. In any case, Opus became insolvent when Husqvarna's claim for litigation costs fell due for payment on May 2, 2018. The transfers of the Patent Rights have thus in any case, together with other circumstances, resulted in Opus becoming insolvent.

3.4. Hui-Ling Chen was a board member of both Opus and DellCron Innovation for the entire period during which the Patent Rights were transferred. Hans Hultman was also deputy board member in both companies during the same period. The transfers have therefore taken place to a related party within the meaning of the Bankruptcy Act. Through Hui-Ling Chen and Hans Hultman, DellCron Innovation had knowledge of Opus' insolvency, that the Patent Rights were transferred for the purpose of excluding them from bankruptcy, and that no equivalent value was added to Opus' bankruptcy estate. Since Opus and DellCron Innovation were related companies, there is no limitation in time for the reversal of the transfers.

3.5. The trustee in bankruptcy for Opus has chosen not to request reversal of the transfers. Thus, Husqvarna as creditor has the right to bring legal action in the case.

DellCron Innovation

3.6. The Patent Rights belong to Hans Hultman and Conny Gustafsson and certain other inventors and investors. The Patent Rights have never been transferred from the inventors to Opus. Opus has therefore not transferred them to DellCron Innovation. Since the Patent Rights have not been transferred from Opus to DellCron Innovation, there can be no reversal.

3.7. Opus became insolvent on May 2, 2018. All transfers referred to by Husqvarna have taken place before that date. Even if the transfers are deemed to have taken place, they have been carried out before the time of insolvency. Because Opus was not insolvent at the time of the transfers, they cannot be reversed.

3.8. As grounds for its position, DellCron Innovation also asserts that the plaintiff has not shown that the requirement of disadvantage that follows from Ch. Section 5 of the Bankruptcy Act is fulfilled.

4. DEVELOPMENT OF THE PARTIES' ACTIONS

Husqvarna

Opus has held the Patent Rights

4.1. Opus has been the registered holder of a number of patents and patent applications, including the Patent Rights. It is a formal condition for the grant of a patent that the applicant states the basis for his right to the invention. Opus has during the application procedure for each patent stated to the registration authorities that Opus has acquired the rights to the present inventions and how the acquisition has taken place, e.g. by agreement, purchase, or gift. Since at least the fiscal year 2013-05-01 - 2014-04-03, Opus' patent portfolio has been included as an asset in Opus' annual reports. In the annual reports from 2014 to 2017 the intangible fixed assets of Opus are stated at the following values:

- SEK 143,233 as of April 30, 2014
- SEK 184,498 as of April 30, 2015
- SEK 615,319 as of April 30, 2016
- SEK 810,134 as of April 30, 2017

4.2. The intangible fixed assets relate, at least in part, to the Patent Rights. In the balance sheet report attached to the auditor's memorandum, an item relating to "Patents" has been listed at an amount of SEK 1,323,044.40 as of May 1, 2017, before the item was nulled some time before 30 April 2018. The inventors themselves have thus not been the owners of the Patent Rights. Opus has been the owner and has been able to dispose of them. This has also happened by Opus transferring the Patent Rights to DellCron Innovation.

The patent rights have been transferred from Opus to DellCron Innovation without compensation

4.3. In May 2018, Opus reported to the Swedish Patent and Registration Office (PRV), the European Patent Office (EPO) and the United States Patent and Trademark Office (USPTO) that it wanted to register a transfer of the Patent Rights to DellCron Innovation. Transfer documents were attached to the notifications.

4.4. It follows from the applications and their appendices that the Patent Rights have been transferred from Opus to DellCron Innovation (then called MTT). It is not in any way clear from those documents that it was a question of any other legal relationship between the parties than the transfer of the Patent Rights.

4.5. The Patent Rights have thus been transferred by Opus to DellCron Innovation. The Patent Rights had a not insignificant value. Opus' accounting records shows that no equivalent value was added to the company. The transfers have thus resulted in that the Patent Rights and/or an equivalent value is withheld from the creditors.

The patent rights were transferred to exclude them from the bankruptcy proceedings

4.6. Opus changed its registered company name on May 17, 2018, i.e., the day before the company's bankruptcy application. Prior to that, it was registered in the company name DellCron. DellCron Innovation's current company name was registered on May 5, 2018, i.e. three days after Opus was ordered to pay Husqvarna's litigation costs in the above-mentioned dispute before the PMD. It is clear that the transfers took place in order to continue the operations of Opus under the same brand (that is, DellCron), but in another company. The Patent Rights were thus transferred for the purpose that these would not be included in the bankruptcy proceedings.

Opus and Dellcron Innovation were related companies at the time of the transfers

4.7. Hui-Ling Chen and Hans Hultman have, during the time the transfers took place, been appointed as board member and deputy board member in both Opus and DellCron Innovation. During certain periods, Hui-Ling Chen has also been the chairman of both companies. Hans Hultman has also since at least 2012 had the right to represent Opus through a general power of attorney. Hui-Ling Chen and Hans Hultman are the ones who, on behalf of Opus, have signed the transfer agreements for the Patent Rights. Hui-Ling Chen has also signed Opus annual reports and certified their accuracy.

4.8. Opus and DellCron Innovation are thus related companies under the Bankruptcy Act and was such at the time of the transfers. This means that DellCron Innovation should be considered to have had such knowledge as is stated in Ch. 4, Section 5 first paragraph of the Bankruptcy Act. This also means that there is no time limit as to which legal acts can be reversed. The connections between Opus and DellCron innovation also mean that DellCron Innovation through Hui-Ling Chen and Hans Hultman was aware of Opus' insolvency, of that the Patent Rights were transferred for the purpose of exempting them from bankruptcy, and that no equivalent value was added to Opus in connection with the transfers.

Opus became insolvent before May 2, 2018

4.9. The time of Opus insolvency probably occurred in October 2014. The insolvency was caused by Opus disposing of assets in the form of the Patent Rights at the same time as the company incurred costs for certain court proceedings. One of these proceedings was the one that resulted in that Husqvarna was awarded reimbursement for litigation costs against Opus. This claim has arisen on an ongoing basis, as the work to which the legal costs relate

was performed. This happened between the years 2015 and 2018. The fact that the Patent Rights were transferred during the same time as Opus incurred costs for, among other things, the now mentioned proceedings, means that the time of insolvency must have occurred sometime during the period between 2013 and May 2, 2018. At the end of October 2014, more than half of Opus' patent portfolio had been transferred to DellCron Innovation. At that time, Opus also had been in litigation against Husqvarna for a long time. Opus should therefore already at this time have been insolvent.

4.10. In the insolvency assessment, the course of events must be assessed in its entirety, that is, the transfers of the Patent Rights, the disputes that Opus was involved in against Husqvarna as well as the claim for litigation costs that fell due for payment on May 2, 2018. These circumstances together have resulted in the insolvency.

The patent rights shall be reversed in accordance with Chapter 4, Section 5 of the Bankruptcy Act

4.11. It follows from the foregoing that Opus held the Patent Rights and transferred them to DellCron Innovation. Through the transfers, the property was withheld from at least one creditor, i.e. Husqvarna. The purpose of the transfer was to exclude them from the bankruptcy of Opus. Through the transfers, together with the other circumstances, Opus became insolvent. Since Opus and DellCron Innovation were related companies, there is a presumption that DellCron Innovation was aware of the insolvency and the circumstances which rendered the transfers improper. For the same reason, a reversal of the transfers can take place without any time limit. The now cited circumstances, taken together, means that the transfers were improper.

4.12. Against this background, the Patent Rights must be recovered from DellCron Innovation and transferred to Opus' bankruptcy estate.

DellCron Innovation

The patent rights have not been transferred from Opus to DellCron Innovation

4.13. Neither DellCron Innovation nor Opus has ever owned the Patent Rights. These are owned by Hans Hultman and Conny Gustafsson together with other inventors and investors. There is a total of about 15 inventors who always have owned, and still own, the Patent Rights. Hans Hultman and Conny Gustafsson are inventors in all the relevant Patent Rights, but they have in different constellations invented some of them together with others. Additional people have also invested in the development of the inventions and have thereby acquired ownership interests in them. The ownership is different for each patent right, but none of them have ever been owned by Opus. Thus, no transfer has ever taken place from Opus to DellCron Innovation.

4.14. Opus has had a contractual relationship with the owner of the Patent Rights. These agreements have been submitted in their entirety to the district court. The relationship has consisted of Opus having received the right to represent the owners in all matters relating to patent applications, e.g. to market and negotiate with suppliers and manufacturers. This right has, in Opus' annual accounts, been valued as the costs for the patents which have been paid through Opus. As compensation for the costs that Opus has paid, the inventors allowed Opus to retain license revenues paid for license agreements that Opus entered into with the inventors' patents as a basis. Through the agreement, Opus and the owners have entered into a commission relationship. It is this one relationship that has been transferred from Opus to DellCron Innovation through the so-called transfer documents that Husqvarna refers to. The contractual relationship that the inventors have had with Opus has not meant that the ownership to the Patent Rights has been transferred to Opus. Since the ownership has not been transferred, Opus has not transferred any of the Patent Rights to DellCron Innovation. Consequently, there is no transfer to be reversed as claimed by Husqvarna.

4.15. In the commentary to the Patents Act, the following is stated: "The Patents Act contains in section 44 rules on the entry in the patent register of the transfer of patents and licensing etc. Such a note has effect only in procedural respect; it therefore has no effect in rem."

Opus became insolvent on May 2, 2018

4.16. Husqvarna's claim for litigation costs against Opus fell due for payment on May 2, 2018. Opus became insolvent at that time. All of the alleged transfers that Husqvarna has invoked took place before May 2, 2018. Since the alleged transfers took place before the time of Opus insolvency, there can be no question of reversal.

4.17. The documents on record include audited annual reports for the entire period (2014-2017), which show that the company's finances were in good order. The trustee in bankruptcy noted in its nominee report that "The time of the insolvency is difficult to assess. ... The definitive time of insolvency should in any case have occurred in connection with the Company being ordered to pay the above costs. " The authorized public accountant, Håkan Fjelner, stated in its auditor's memorandum (attached to the nominee report) that "The insolvency is likely to have occurred in early May 2018."

4.18. Regarding Husqvarna's litigation costs from previous proceedings, it is emphasized that there is no obligation for a company to continuously, during ongoing proceedings, set aside funds for the other party's estimated litigation costs.

The Patent Rights shall not be recovered in accordance with Ch. 4 Section 5 of the Bankruptcy Act

4.19. Because the Patent Rights have not been transferred from Opus to DellCron Innovation, there can be no reversal of the transfers. Even if such a transfer has taken place, Opus became

insolvent only on May 2, 2018. Because the alleged transfers took place before that, there can be no reversal also for that reason.

The value of the Patent Rights is uncertain

4.20. It has not been established that the transferred property has any economic value. The bankruptcy trustee's administration report states that "The value of transferred patent applications and patents is uncertain" and that disputes are pending in relation to several of the current patents, with claims for revocation. DellCron Innovation considers that the plaintiff has not shown that the detriment requirement in Chapter 4, Section 5 of the Bankruptcy Act is fulfilled.

5. EVIDENCE

5.1. Husqvarna has invoked the testimony under oath of **Stefan Ekblad**, employed at Husqvarna and involved in the discussions that preceded the cooperation agreement which was entered into between Husqvarna and Opus.

5.2. DellCron Innovation AB has invoked testimony under a declaration of truth with **Hans Hultman** and **Henric Andersson** (CEO of Husqvarna) and testimony under oath of **P-G Jönsson**, **Sten Grettve** and **Johnny Ederyd**.

5.3. Both parties have invoked extensive written evidence.

6. REASONS FOR THE JUDGMENT

Introduction

6.1. The conditions for recovery are set out in Chapter 4, Section 5 of the Bankruptcy Act, which is worded as follows:

A legal act, whereby in an improper manner a certain creditor has benefited over others or the debtor's property has been withheld from creditors or his debts have increased, is reversed, if the debtor was or through the proceedings, alone or in association with another circumstances, became insolvent as well as the other party knew or should have been aware of the debtor's insolvency and the circumstances which rendered the act improper.

Related parties to the debtor shall be deemed to have such knowledge as stated in the first paragraph, unless it is made probable that he neither had nor should have had such knowledge.

If the legal action took place more than five years before the deadline, the legal act is reversed only when it has concerned someone related to the debtor.

6.2. It is established in the case, which has also not been questioned, that DellCron Innovation was related to Opus within the meaning of Ch. 4, Section 5 of the Bankruptcy Act. Hui-Ling Chen was a board member of both Opus and DellCron Innovation during the

entire period during which the Patent Rights were transferred. Hans Hultman was also deputy board member in both companies during the same period. What DellCron Innovation has objected is that DellCron did not own the Patent Rights and that no transfer of the same has therefore taken place, that such transfer under no circumstances would have been to the detriment of the creditor Husqvarna (the so-called requirement of detriment) because it has not been shown that the Patent Rights represented any value, that Opus did not become insolvent through the transfers, neither alone nor in conjunction with any other circumstances, and that the transfers were not improper.

6.3. This means that the district court mainly has four issues to examine in these proceedings. The issue that the district court will first examine is who owned the Patent Rights at the time of the transfer, was it Opus (at the time under the company name DellCron) or the respective inventors? If the district court finds that it is the respective inventors who owned the Patent Rights, the claim shall be dismissed already for that reason, because any transfer of the Patent Rights has in that case not taken place. If, on the other hand, the district court finds that transfers did take place and that it is DellCron Innovation which owns the patent rights, it remains to examine if the detriment requirement is fulfilled and if Opus through the transfers of the Patent Rights, alone or in conjunction with another circumstances, have become insolvent. Finally, the district court, if the other requirements in Ch. 4, Section 5 of the Bankruptcy Act are fulfilled, will decide whether the transfers have involved that the Patent Rights have been improperly withheld from the creditor Husqvarna. If this is the case, the Patent Rights shall be returned to Opus' bankruptcy estate.

Ownership of the Patent Rights

6.4. The district court has heard the testimony of four people (Hans Hultman, P-G Jönsson, Johnny Ederyd and Sten Grettve) who have stated that their perception is that it was the respective inventors who owned the rights to the inventions. Hans Hultman has stated that there was never any talk of transferring the rights to the different inventions to Opus, but only of giving Opus the right to represent them in various legal and administrative issues. Johnny Ederyd, who himself has contributed to some of the inventions at issue in the case, has also perceived it as if he had never relinquished his right to the inventions. P-G Jönsson and Sten Grettve has only heard from the inventors themselves how they view the ownership relationship and P-G Jönsson, a lawyer who has represented DellCron in previous litigation, has stated that he has never looked into the matter.

6.5. After a review of the patent applications invoked by Husqvarna, the district court concludes that there is no doubt that it was Opus who applied for the patents and that it did so on the basis that the rights to the inventions had been transferred to the company by gift, employment contract or agreement. It follows already from Section 1 of the Patents Act (1967: 837) that it is only the inventor or the person to whom the inventor's rights have been transferred who can apply for a patent. In the district court's opinion, it has been proven, through the documents and supplementary statements made to some of these, that it was the

company Opus (which then had the company name DellCron AB) which applied for all 32 patents at issue in the case and that the statements that the rights had been transferred to Opus were not given by mistake. In some cases, Opus even received supplementary office actions from PRV requesting information as to the basis for the company's right to the inventions which led to that Opus, which was also represented by patent attorneys, supplemented their application with a statement that it was a gift, employment contract or other agreement.

6.6. Another fact that provides strong support for Husqvarna's position in this issue is that according to the respective transfer document it appears that it was in fact DellCron (i.e. Opus) who transferred the Patent Rights and not the respective inventors.

6.7. Hans Hultman and Johnny Ederyd have admittedly said that they perceived that they owned the rights to the inventions. The agreement invoked by DellCron Innovation provides the same indication and gives the impression that Opus only had the right to represent the inventors in various matters (like a commissioner relationship). DellCron Innovation has further argued that it does not exist any written agreements in support of the inventors' transfer of their right to the inventions of Opus. Despite these objections, the district court concludes that there is no formal requirement for transfers of such rights, and that there is only one basis for applying for a patent on an invention which is that you are the owner of the right to that invention. The right to for example grant licenses follows from Ch. 6, Section 43 of the Patents Act and means that it is only the patent holder who can grant a license. Because the transfers at issue in the case can potentially be considered as licenses and not patent transfers, there would have to have been an original patent holder who had granted a license to Opus. That was however not the case, but Opus was in fact the original patent holder. It is for the stated reasons shown that it was Opus who owned the right to the inventions and who was therefore eligible to apply for a patent.

6.8. In summary, the district court finds that Opus was the owner of the inventions and that Opus was therefore legally able to transfer the patent rights to MTT, i.e., the company that later became DellCron Innovation.

The transfers of the Patent Rights

6.9. Through the written transfer documents that Husqvarna has invoked as evidence, it has been shown that Opus has transferred Swedish, European and American Patent Rights at different times from May 25, 2012 until May 8, 2018, to MTT (now DellCron Innovation) completely free of charge. Hereby, the Patent rights were, in an objective sense, removed from Opus, which company was later declared bankrupt.

Have the transfers of the Patent Rights been to the detriment of the creditor Husqvarna?

6.10. DellCron has objected that it has not been shown that the Patent Rights had any

value at all and that it is therefore not proven that a possible withdrawal of those rights has been detrimental to Husqvarna, something that is a prerequisite for the reversal of the transfers.

6.11. From the evidence, it has been difficult for the district court to draw any certain conclusions about the value of the patent rights at different points in time, something also confirmed by the bankruptcy trustee in the nominee report. There are, however, some general reference points. One is that the intangible fixed assets have been stated at a certain value in the annual reports that have been presented to the district court. DellCron Innovation has objected that these assets consisted of other property than patents and that that item does not serve as an indication for a conclusion that the Patent Rights had any value. It is, however, undisputed between the parties that the intangible fixed assets had the value assigned to them in the annual reports, and the question is rather which assets are covered by this item. From the annual report for the fiscal year May 1, 2016 - April 30, 2017 it appears that the intangible fixed assets on April 30, 2017 represented a book value about SEK 810,134. A comparison with the nominee's report (balance sheet report for May 1, 2017 - April 30, 2018) suggests that Opus on May 1, 2017 held patent(s) with a book value of SEK 1,353,044, which after deduction for accumulated depreciation of SEK 542,910 gives SEK 810,134. That amount is the same as has been included in the balance sheet in the annual report for fiscal year 2016/2017 under the item "Intangible fixed assets". The balance sheet report does not state that Opus owned any intangible fixed assets other than the patents listed at a value of SEK 1,353,044, which means that DellCron Innovations' claim that there may be other rights than the Patent Rights included in the post "Intangible fixed assets" has been refuted.

6.12. This also means that the Patent Rights had a book value of a not insignificant amount and that it was therefore to the detriment of the creditor Husqvarna that the Patent Rights were withheld from Opus' bankruptcy estate.

Have the transfers of the Patent Rights directly or indirectly caused an insolvency situation for Opus?

6.13. It is clear from the trustee's nominee report that the time of insolvency is difficult to assess, but that it at least occurred on May 2, 2018, when Opus was obliged to pay more than SEK 3 million in litigation costs to Husqvarna.

6.14. The district court concludes that there is insufficient evidence to find that the insolvency date occurred earlier than May 2, 2018. In this question, the district court notes, however, that the recovery of the Patent Rights does not require the insolvency date to be earlier than May 2, 2018, but rather that it is fully sufficient that Husqvarna is able to show that the transfers of the Patent Rights, alone or in conjunction with another circumstances (for example, obligations during those years to pay litigation costs), meant that Opus became insolvent.

6.15. In order for the district court to be able to conclude that Husqvarna has proved its claims in this part, the district court must find unequivocal support for that the transfers of the Patent Rights have had the negative impact on Opus financial situation claimed by Husqvarna.

6.16. From the annual reports that the district court has read regarding all of the fiscal years between 30 April 2013/30 April 2014 and 30 April 2016/30 April 2017, it appears from the balance sheets that the book value of the intangible fixed assets have steadily increased from SEK 143,233 (April 30, 2014) to SEK 810,134 (April 30, 2017). During the same period, ten (of a total of 15 transferred patents) of the Swedish Patent Rights, four (of a total of eleven transferred patents) of the European patents and two (of a total of six) U.S. patents were transferred. This means that 18 transfers out of a total of 32 (approx. 56%) took place during the same period as the book value of the intangible assets fixed assets increased by more than 500%. This would, from a strict review of the annual reports, contradict that the transfers have had a negative effect on Opus' solvency.

6.17. An additional fact that seems strange to the district court is that, as of April 30, 2017, only four of the patents at issue in the case remained in Opus' patent portfolio. The difference at hand when you subtract the 18 Patent Rights transferred between April 30, 2014 and April 30, 2017 and the four Patent Rights that remained on April 30, 2017 from the total the number of transferred Patent Rights, i.e., 32 patents, is the result of the fact that those patent rights (ten) transferred before April 30, 2014. This means that 28 out of the total 32 Patent Rights at issue in the case already had been transferred as of April 30, 2017 and that the 28 patent transfers did not have any negative impact *visible* to the district court on Opus' solvency.

6.18. According to the district court, something that clarifies the situation is the nominee report invoked by Husqvarna. From the report, it follows (below heading "Recovery") that Opus had requested shortly before the bankruptcy that the transfers would be re-registered to the related company DellCron Innovation. Furthermore, the bankruptcy trustee stated that in Opus' accounting there was only one recorded transaction that appeared to be related the transfers, and it was an item of expenditure relating to compensation to one patent firm. The district court can thus conclude that the transfers of the Patent Rights free of charge had not been recorded until May 2018, when they were re-registered to DellCron Innovation. It therefore does not seem particularly noteworthy that these, not previously booked, transfers did not affect the book value of the Patent Rights in the negative. The transfers had simply not been reported before.

6.19. The above means that there is no contradiction in that the value of the Patent Rights increased during the same period as they were transferred; that it appears that way, according to the district court, depends solely on the fact that the transfers were not recorded by Opus during the years in which the transfers took place. That, in turn, means that the book value recorded for intangible fixed assets in April 2017 (SEK 810,134) did not correspond to reality

since all but four patents had already been transferred, while the book value - as it may be understood - relates to all 32 patents. The value which has been included in the annual report may be assumed to be based on information originating from representatives of Opus. The district court therefore considers that this value must be taken for true in these proceedings and that it corresponds to the value that the Patent Rights had would have had if they had remained in Opus' possession on April 30, 2017.

6.20. This means that Patent Rights of not insignificant values gradually disappeared from Opus as the Patent Rights were transferred to DellCron Innovation. The district court considers that there is no justification for a conclusion that the transfers themselves put Opus into a state of insolvency, but that they combined with other circumstances, mainly the costs of the trials in the 2010s, contributed to Opus becoming insolvent on May 2, 2018.

6.21. According to the district court, it is apparent that DellCron Innovation was aware of Opus' insolvency and the circumstances that led to the insolvency situation, because the same people were active on the boards of both companies.

Were the transfers improper?

6.22. A requirement for the reversal of the transfers is that the district court finds that the transfers have been made with an improper purpose. Gertrud Lennander discusses this requirement in detail. She states i.a. that this requirement should be defined according to the same guidelines as the term "disloyal" (Recovery in Bankruptcy [*Sw. Återvinning i konkurs*], JUNO Version 4, pp. 162 ff.). Regarding the latter concept, she explains that a disloyal legal act is one that has been undertaken to circumvent the consequences of an impending bankruptcy. The commentary to Ch. 4, Section 5 The Bankruptcy Act states, however, that the requirement is not limited to the case of an imminent bankruptcy, but rather that the improper legal action can in fact provoke insolvency. Furthermore, it is noticeable that even legal acts that were undertaken long before bankruptcy can be challenged because the recovery period for related parties is unrestricted.

6.23. In this case, the district court notes that the first transfer to MTT took place already in 2012, which is close to six years before the time of bankruptcy. According to the district court, it is difficult to say with certainty that precisely those transfers, which took place so long before the bankruptcy, were made in order to escape the consequences of a possible bankruptcy, but it is just as difficult to see any other reason. The district court considers that an overall assessment of Opus' actions must be made, actions involving continuous transfers of Patent Rights, to a related company, for a period of six years without any registration of the transfers taking place and where they could not be observed in the company's annual reports. Such registration was conducted only in connection with the bankruptcy, which meant that the transfers only then became known to the creditor Husqvarna. In this context, it is worth pointing out that Opus, also in connection with the bankruptcy, changed its company name from DellCron AB to Opus. At around the same time, the company MTT, which is

related to Opus 3, changed its company name to DellCron Innovation, which is the company that now holds the patent rights. According to the district court, the entire course of action gives the impression of being tailored to withhold the Patent Rights from Opus' bankruptcy and instead use them in another company with DellCron in the company name. Against this background, the district court considers that the transfers must be considered to have been improper in the sense of Ch. 4, Section 5 of the Bankruptcy Act.

Summary

6.24. This means that all the requirements for recovery according to Ch. 4, Section 5 of the Bankruptcy Act are fulfilled and that the plaintiff's claims shall be upheld.

Litigation costs

6.25. As the action is upheld, DellCron shall pay compensation for litigation costs incurred by Husqvarna. According to Ch. 18, Section 8 of the Code of Judicial Procedure the compensation shall fully correspond to the cost of the preparation of the trial and the execution of the action as well as a fee to counsel or representative, insofar as the cost has been reasonably required for the protection of the party's rights.

6.26. Husqvarna has requested compensation of SEK 1,231,366 excluding VAT, of which SEK 1,077,100 relates to counsel fees, SEK 147,860 to costs for experts who consulted on insolvency issues and review of accounting records and SEK 3,606 to the witness Stefan Ekblad's attendance at the main hearing. DellCron has accepted SEK 500,000 in terms of counsel fees, but nothing else.

6.27. The district court initially notes that Husqvarna's counsel have conducted solid work and that the dispute must undoubtedly have given rise to a great deal of work from the counsel. Also the fact that the district court had to cancel a main hearing due to the ongoing pandemic is likely to have affected costs in a negative direction. Despite this, the district court considers that the cost claim appears to be high, especially in the case of the three items, pre-procedural measures, initial correspondence and preparations; and attendance at preparatory hearing. These items amount to SEK 334,260 and the district court considers it reasonable that DellCron Innovation shall compensate half that amount, i.e. SEK 167,130. Otherwise, the district court has no comments on Husqvarna's claim for compensation for fees.

6.28. With regard to costs for external advisers, the district court considers that, in general, it is not reasonable for the counterparty to have to pay for costs which arises due to the fact that the own counsel does not have the legal expertise required to conduct the proceedings. In this case, however, the district court finds that this case covers two very specific and widely different areas of law, intellectual property and insolvency law. Husqvarna's action has undoubtedly benefited from that the counsel had deep knowledge of intellectual property law

and it cannot have been easy to find such counsel who is also an expert in insolvency law. For that reason, the district court considers that the cost item itself is to be reimbursed by DellCron Innovation. However, the district court considers that the cost, SEK 147,860, for that advice is too high for it to be reasonable to let DellCron Innovation bear the full cost. The district court therefore decides that the cost in that part shall be reduced by half, and that DellCron Innovation shall pay SEK 73,930 of the cost. Otherwise, Husqvarna's cost claim shall be accepted.

6.29. In summary, this means that DellCron Innovation shall replace Husqvarna's costs of SEK 990,306.

HOW TO APPEAL, see appendix 2 (TR 02) *[excluded in translation]*

Appeals shall be addressed to the Svea Court of Appeal but must have been received by the district court at the latest on November 20, 2020.

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APPENDIX 1

TRANSFERS

Swedish patent rights

	Application with number	Transfer according to document dated
A	1300377-7	23 May 2013
B	1400142-4	March 13, 2014
C	1400152-3	March 20, 2014
D	1451165-3	October 1, 2014
E	1451166-1	October 1, 2014
F	1451167-9	October 1, 2014
G	1400558-1	November 21, 2014
H	1500159-7	March 30, 2015
I	1551403-7	October 30, 2015
J	1600036-6	February 9, 2016
K	1600058-0	February 23, 2016
L	1600088-7	March 10, 2016
M	1651435-8	November 1, 2016
N	1750835-9	June 28, 2017
O	1800037-2	February 13, 2018

European Patent Rights

	Application with number Publication number within parenthesis	Transfer according to document dated
A	EP11840667.7 (EP2659558)	May 25, 2012
B	EP11839256.2 (EP2638608)	May 25, 2012
C	EP11840545.5 (EP2663436)	May 25, 2012
D	EP11840672.7 (EP2658696)	May 25, 2012
E	EP13788540.6 (EP2847836)	May 8, 2013
F	EP14801497.0 (EP2999826)	22 May 2014
G	EP15860369.6 (EP3221938)	November 19, 2015
H	EP15762994.0	September 11, 2015
I	EP15771875.0	September 17, 2015
J	EP17176614.0 (EP3252236)	June 29, 2017
K	EP17853542.3	September 21, 2017

U.S. Patent Rights

	Application with number Publication number within parenthesis	Transfer according to document dated
A	US13 / 884515 (US9537292)	May 15, 2013
B	US13 / 884485	May 15, 2013
C	US13 / 884551 (US9850629)	May 15, 2013
D	US13 / 883040 (US9188987)	June 5, 2013
E	US14 / 888160 (US9876337)	November 25, 2015
F	US15 / 358711	December 29, 2016