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Hydrogen-absorbing composition/PRYSMIAN, European Patent Office (EPO Board of Appeal), 14 May 2009

Ferry van Looijengoed · Thursday, May 14th, 2009 · Landmark European Patent Cases

During appeal proceedings, the appellant argued lack of inventive step on the basis of public prior use of a composition for making the claimed product. The prior use appeared to relate to an ordinary commercial transaction. The patentee argued that the offer, sale and delivery of the product were only for test purposes. The Board of Appeal held that the mere fact that a product has been delivered possibly for carrying out tests in what appears to be the result of an ordinary commercial transaction, does not constitute by itself a sufficient condition for concluding that the product was necessarily delivered under an implicit confidentiality agreement. The Board of Appeal also concluded that for an inventive step analysis, the public prior use could serve as the closest state of the art and that there is no reason for treating differently information rendered available to the public by prior use and information made available by other means. The notional skilled person referred to in Article 56 EPC is supposed to be aware of all features of the prior use.

The [full summary](#) of this case has been published on [Kluwer IP Law](#).

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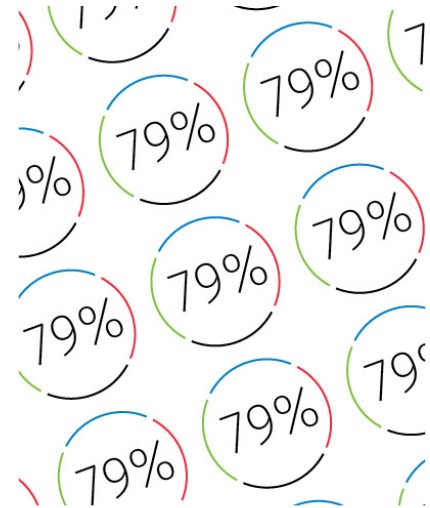
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