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Winkelmesseinrichtung, Federal Court of Justice (Bundesgerichtshof), 21 October 2010

Jochen Buehling (Krieger Mes Graf & v. der Groeben) · Sunday, April 10th, 2011

The Court addresses the issue of how to deal with a feature of a patent claim that was not originally disclosed, but the deletion of which would lead to a broadening of the scope of the claim and would thus not be admissible. The Court allowed that the feature remains in the claim, provided that it is a limitation of the scope of the claim and that the patentee does not derive any rights from this feature. It is not necessary to introduce a disclaimer into the description or the claim. However, such a disclaimer is not harmful either. The patent may not be revoked merely because a disclaimer is missing. In this context the Court specifically referred to the case law of the Enlarged Board of Appeal at the EPO.

Click here for the full text of this case.

A full summary of this case has been published on Kluwer IP Law.

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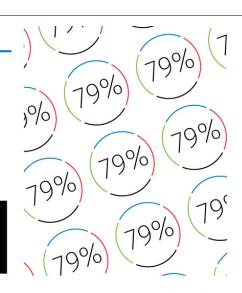
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