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## Improvement of Legal Protection in Germany

Henrik Timmann · Friday, November 11th, 2011 · Landmark European Patent Cases

by Dr. Ulrich Pross, [rospatt osten pross](#)

Sec. 522 Civil Procedure Act (CPA) provided that courts competent to hear appeals on fact (Berufungsgerichte) can and must reject an appeal (Berufung) immediately without hearing if

- the appeal has no chance of success,
- the case is not of fundamental significance, and
- neither the development of the law nor the assurance of uniform applications of the law require the appeals court's decision (on the matter itself).

The provision had been passed into law in 2002 in an effort to shorten the duration of forensic proceedings. To further this end, Sec. 522 also provided that orders based on it could not be brought to review before the next instance – the Federal Court of Justice. With nothing but blue skies above them, it is said, courts of appeal have (ab)used Sec. 522 CPA to reject appeals where in fact the provision's criteria had not been met. Sec. 522 CPA has been criticized as a violation of the fundamental right to effective legal protection.

An amendment to the CPA that took effect on 27 October 2011 reduces the likelihood of such misuse. Decisions made on the basis of Sec. 522 can now be contested by means of legal remedy that would be admissible if the court of appeal had decided by judgment, e. g. a complaint against non-admission (Nichtzulassungsbeschwerde). A fourth criterion has been added, so the court of appeal can order an oral hearing even when it is convinced that the appeal has no prospects of succeeding. Moreover, the court, in particular circumstances, may not apply Sec. 522 CPA even when they have before them an appeal that fulfills all criteria for rejection.

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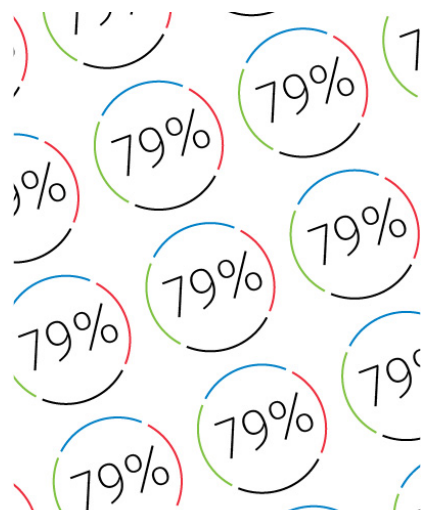
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