

# Extraterritorial acts can constitute a patent infringement in Germany

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Hetti Hilge (Rospatt Osten Pross.)

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The Bundesgerichtshof (German Federal Court of Justice) in the decision *Audiosignalcodierung* (judgement of 3 February 2015, X ZR 69/13) confirmed the principle established in the Bundesgerichtshof decision *Funkuhr II*, according to which the delivery of a product to a third party in a territory outside of Germany constitutes a patent infringement in Germany if the party was aware that the product will subsequently also be imported into Germany.

In the case *Audiosignalcodierung* concerning contributory infringement the defendant was a Chinese company that delivered means which constituted an essential element of the patented method, inter alia, to another company in China. Following the findings of the Appeal Court Karlsruhe the defendant knew that this third company would possibly export the products also to Germany (among the attacked products were mobile TV devices with an integrated decoder or with decoding software that make use of the MPEG-2 standard and that process broadcasting signals according to the DVB standard). The defendant had thus caused the infringing acts in Germany by delivering the products to the other company in China and was responsible for the infringement of the German part of the European Patent (EP 568 532).

The decision further contains interesting remarks on contributory infringement and what constitutes an essential element of the invention, as well as on independent parallel responsibility for contributory infringement of a method claim comprising several method steps when certain steps are conducted by another party.

**Hetti Hilge**  
rospatt ostent pross - Intellectual Property Rechtsanwälte