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German Bundesgerichtshof on joint nullity actions

Thomas Musmann (Rospatt Osten Pross) · Thursday, February 18th, 2016

by Bernward Zollner

In a recent judgment announced on 27 October 2015 the German Bundesgerichtshof has issued a judgment which concerns joint nullity actions (X ZR 11/13 – Fugenband). Two nullity-plaintiffs had filed nullity actions at the German Bundespatentgericht seeking to nullify a patent. The German Bundespatentgericht had completely dis-missed both nullity actions. Against this judgment only one of the nullity-plaintiffs had submitted an appeal which the German Bundesgerichtshof has decided with the judgment of 27 October 2015. In this judgment the German Bundesgerichtshof has partially nullified the patent and has changed the cost decision of the first instance in favour of both nullity-plaintiffs although only one of the nullity plaintiffs had brought the case into the second instance to the Bundesgerichtshof. The changed cost decision also concerned nullity-plaintiff who had not lodged an appeal because in a nullity-action the decision can only be made with a unified effect for everybody irrespective whether the patent is completely or partially nullified. In the particular case the change of the cost decision was in favour of both nullity-plaintiffs.

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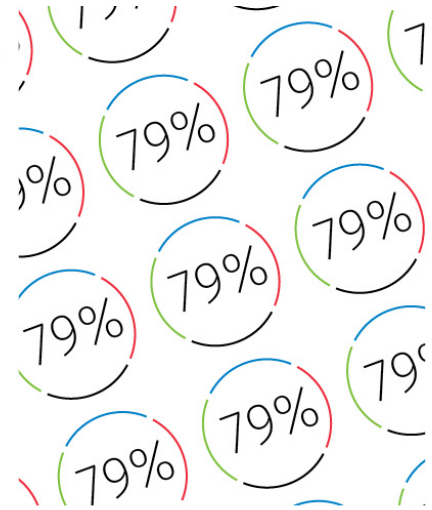
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