

Use Patents under German Law - Manifest Arrangement II

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Thomas Musmann (Rospatt Osten Pross) and Simon Klopschinski (Rospatt Osten Pross.)

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In its decision of December 15, 2015 the Federal Court of Justice confirmed the judgment of the Karlsruhe Higher Regional Court of 2014 concerning the direct infringement of use patents by manifest arrangement.

In this case the defendants had manufactured insulation material made of glass fibres and sold it to the building industry in Germany. The patent in suit claimed the use of glass fibres, which have a specific glass composition and diameter, as glass fibres which exhibit no carcinogenic potential. The patent's scope was not restricted to a specific use of the glass fibres, e.g. as insulation material. In fact the patent protected all uses of the specific glass fibres where a carcinogenic risk shall be avoided.

The Karlsruhe court had found direct infringement. The Federal Court of Justice confirmed the findings of the Karlsruhe court and explained that the defendants had manifestly arranged their product for the use as non-carcinogenic glass fibres by offering it as insulation material for the building industry, thereby revealing that in their view the product complied with the relevant statutory requirements which prohibit the use of potentially carcinogenic glass fibres.