

German Federal Supreme Court (BGH) on entitlement

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by Bernward Zollner for rospatt ostern pross

In a recent decision of 10 January 2017 (BGH X ZR 17/13) concerning a "Restitutionsklage" against a final patent infringement judgement of the Appeal Court Düsseldorf the German "Bundesgerichtshof" has broadened the scope of the doctrine which the court has developed under the heading "Crimp-Werkzeug". This doctrine was developed for situations in which an obvious contradiction existed in construing a patent claim (in course of the nullity action on the one hand and in course of the patent infringement action on the other hand). The doctrine "Crimp-Werkzeug" did, however, not concern situations in which the claim of a patent was changed by the introduction of an additional feature. Such change of the claim was a reason to file the "Restitutionsklage" (so that it was not a problem for defendant of the infringement action if the infringement-judgement had become a final judgement in the meantime). The doctrine "Crimp-Werkzeug" is now broadened in that the defendant of an infringement action must be in compliance with this doctrine also in a situation where the claim of the patent is changed.

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