

# Kluwer Patent Blog

## And here is Germany's contribution to World Intellectual Property Day 2018

Thorsten Bausch (Hoffmann Eitle) · Thursday, April 26th, 2018

...clearly less spectacular than the UK's ratification of the UPCA, but nevertheless noteworthy and – perhaps! – even more relevant in the long run (but that we shall see). My colleague [Mike Gruber](#) was kind enough to compile the following brief summary of the Federal Patent Court's full decision on the Raltegravir (Isentress®) compulsory license matter. Here is Mike's report:

**Isentress II**, decision on royalty rate in Merck v. Shionogi, [3 Li 1/16 \(EP\)](#)

Today, the German Federal Patent Court published its written reasoning of the 21 November 2017 ruling in the main proceedings of Merck's compulsory license action. To recap briefly, in August 2016 the Federal Patent Court granted the first compulsory license in preliminary proceedings in Germany and allowed Merck to use Shionogi's European Patent EP 1 422 218 with regard to certain dosages of the antiretroviral drug Isentress® (confirmed on appeal). Since the patent in suit was revoked by the European Patent Office in the meantime, the present main proceedings focused on setting the royalty rate for the compulsory license and rendering of accounts.

The Federal Patent Court ordered Merck to pay for using the patent until the revocation. The royalty rate was set at 4% of net sales of Isentress®, taking into account the typical royalty range, the patent's potential impact on the market and other factors such as the contribution of the patent to the actual product covered by the compulsory license and the required use of the licensee's own IP rights. For assessing the contribution of the patent to the actual product, the court considered the amount of (fictitious) development work that would have been needed to arrive at the marketable product. Factors which can lead to an increase of the royalty rate for a compulsory license were said to include the continuous risk for the patentee that the patent's validity will be attacked and the fact that it results in the involuntary aid to a competitor.

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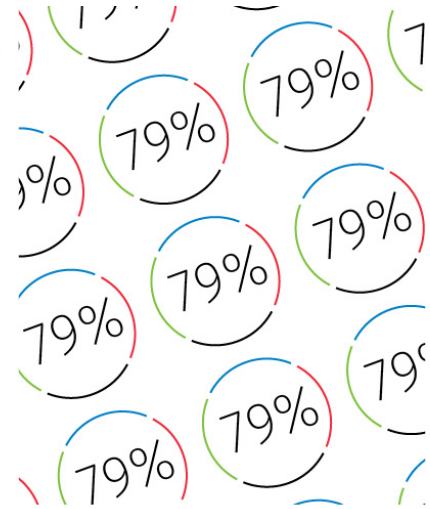
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