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# Kluwer Patent Blog

## Patent case: Feuerfeste Zustellung einer Gießpfanne, Germany

Thorsten Bausch (Hoffmann Eitle) · Tuesday, October 16th, 2018

The Federal Court of Justice held that the purpose of determining the technical problem (objective) in invalidity proceedings is to locate the starting point of skilled efforts to enrich the state of the art without knowledge of the invention, in order to assess, in the subsequent and separate examination of patentability, whether or not the solution proposed for this purpose was rendered obvious by the state of the art. Accordingly, it does not have the function to make a preliminary decision on the question of patentability. Therefore, it is neither permissible to take into account elements belonging to the solution according to the patent in the formulation of the problem nor may it be assumed without further ado that it was appropriate for the person skilled in the art to deal with a particular problem.

However, it also cannot be assumed that a certain technical problem is not part of the problem to be solved, because the statements relating thereto in the patent specification were not contained in the original application documents. According to the established case law of the Federal Court of Justice, the technical problem underlying an invention arises from what the invention actually achieves. In this respect, the determination of the problem and the interpretation of the patent claim are in a certain interaction. However, in view of the priority of the patent claim over the remaining content of the patent specification, the determination of the problem may not result in a material restriction of the subject matter defined by the purposive construction of the patent claim.

Case date: 13 March 2018

Case number: X ZR 44/16

Court: Federal Court of Justice of Germany

A full summary of this case has been published on [Kluwer IP Law](#).

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This entry was posted on Tuesday, October 16th, 2018 at 3:09 pm and is filed under [Case Law](#), [Germany](#), [Priority right](#)

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