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Patent case: Heizkessel, Germany

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A nullity action is still admissible after expiration of the patent if it provides the nullity plaintiff, who had been unsuccessful as defendant in infringement proceedings, the possibility of bringing an action for restitution against his conviction and if the nullity plaintiff declares that he intends to make use of this possibility (xref. X ZR 17/02).

There may already be a motivation to resort to a technical solution that can be considered part of the general knowledge of the person skilled in the art where there is no concrete precedent for the use of this solution, but if and when the use of its functionality in the relevant context is objectively expedient and no special circumstances can be ascertained which make an application appear impossible, associated with difficulties or otherwise inconvenient (xref. X ZR 139/10 and X ZR 109/15). These conditions are not met in this case.

Case date: 14 August 2018

Case number: X ZR 92/16

Court: Federal Court of Justice of Germany

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

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