

Kluwer Patent Blog

Patent case: Schutzverkleidung, Germany

Christian Buchholz (Krieger Mes & Graf v. der Groeben) · Wednesday, April 22nd, 2020

The Federal Court of Justice made the following findings in relation to the material and personal scope of the right to prior use:

1. Where a pre-used embodiment does not implement all features of the patent claim, a modification of the pre-used embodiment which implements all the features is not covered by the right of prior use.
2. The limits of the right of prior use may be exceeded if an additional advantage is realised with the modification which was not realised by the pre-used embodiment. In particular, this may be the case where a modification corresponds to an embodiment which is highlighted in a dependent claim or in the description of the patent because of this additional advantage.
3. Where the pre-used embodiment used one of two alternatives which are mentioned as fully equivalent in the patent claim, a modification which implements the other alternative is also covered by the right of prior use.
4. The manufacturer of individual parts which can only be assembled in a technically and economically sensible way to form a device which gives rise to the right of prior use is the holder of such right even if he or she does not assemble the parts themselves.
5. Under the circumstances of point 4, the manufacturer of the individual parts may also use a process protected by the patent, provided that the procedural instructions of the process claim are limited to teaching the only technically and economically sensible assembly

Case date: 14 May 2019

Case number: X ZR 95/18

Court: Federal Court of Justice of Germany

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

To make sure you do not miss out on regular updates from the Kluwer Patent Blog, please subscribe [here](#).



Want to improve your IP strategy?

- Manual of Industrial Property
- IP Analytics
- Visser – Annotated European Patent Convention

230+ jurisdictions
36,000+ cases
100+ books
600+ IP law professionals as authors

Request a free demo now
KluwerIPLaw.com

 Wolters Kluwer

This entry was posted on Wednesday, April 22nd, 2020 at 1:53 pm and is filed under [Case Law](#), [Germany](#), [Prior use right](#). You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. Both comments and pings are currently closed.