
Kluwer Patent Blog

Boston Scientific v. Medinol, Supreme Court (Hoge Raad), 06 March 2009

Peter Burgers (Brinkhof) · Friday, March 6th, 2009

The Dutch Supreme Court stated that the patentee still has an interest in this supreme appeal proceeding after amendment of the patent pursuant to Articles 105a-c EPC 2000 subsequent to coming into force of EPC 2000 and the Appeals Court's decision to nullify the patent. Although the Appeals Court in subsequent proceedings should take the patent as amended as a starting point for evaluating validity and extent of protection, it may still evaluate the patent's validity considering Articles 52-57 EPC.

According to the Dutch Supreme Court its so-called Spiro/Flamco doctrine, which doctrine set strict requirements for partial nullification/maintenance of a patent, is no longer applicable since EPC 2000 came into force. Furthermore, the Supreme Court held that the Appeals Court should not have taken into account the issues of unity of invention (Article 82 EPC) and the presence of a divisional application (Article 76 EPC) when assessing the request for partial nullification.

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

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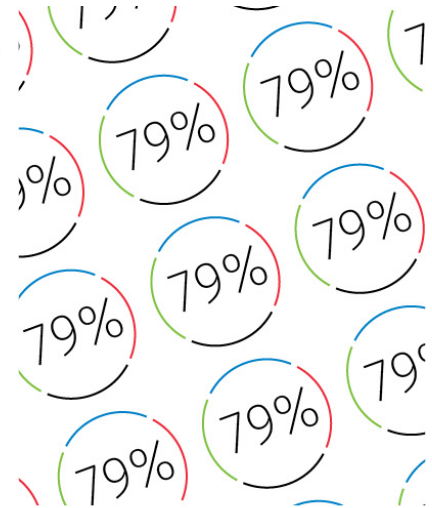
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This entry was posted on Friday, March 6th, 2009 at 7:02 am and is filed under [G 1/93](#), [OJ 1994, 541](#)) *The 'gold standard' of the European Patent Office's Board of Appeal is that any amendment can only be made within the limits of what a skilled person would derive directly and unambiguously, using common general knowledge, and seen objectively and relative to the date of filing, from the whole of the documents as filed (G 3/89, OJ 1993,117; G 11/91, OJ 1993, 125).*">Amendments, [Biologics](#), [Case Law](#), [Extent of Protection](#), [Netherlands](#)

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