# Kluwer Patent Blog

## Apparatus for closing containers, Federal Court of Justice (Bundesgerichtshof), 07 October 2009

Clemens Rübel · Monday, September 7th, 2009 · Landmark European Patent Cases

The Federal Court of Justice confirmed the legal reasoning of the Federal Patent Court that a company that continued the business of another company, while it was founded independently from the continued company and does not take over the trade name under which it conducted business, is not bound by a non-contest clause between the continued company and the patent holder. This applies even to cases where the new company can be suspected to act as a straw man in order to evade the non-contest clause. This may violate the non-contest clause, but does not eliminate the right to sue of the new company in nullity actions against the patent.

The full summary of this case has been published on Kluwer IP Law.

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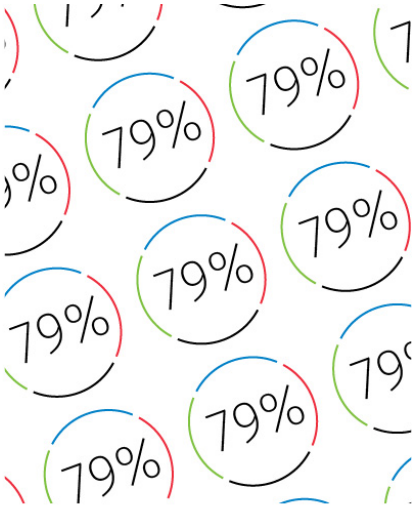


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This entry was posted on Monday, September 7th, 2009 at 7:26 am and is filed under Art. 123(2) of the European Patent Convention (EPC), a European patent (application) may not be amended in such a way that it contains subject-matter which extends beyond the content of the application as filed. Adding subject-matter which is not disclosed would give an applicant an unwarranted advantage and could be damaging to the legal security of third parties. (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).*">Added matter, Case Law, Germany, Mechanical Engineering
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