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# Kluwer Patent Blog

## German Federal Supreme Court strengthens the significance of EPO's and foreign courts' decisions

Thomas Musmann (Rospatt Osten Pross) · Tuesday, July 6th, 2010

The German Federal Supreme Court (Bundesgerichtshof) has recently made clear that every court has to take into account preceding decisions of the European Patent Office (EPO) and of courts of other contracting states to the European Patent Convention (EPC) if these decisions essentially concern the same questions. Although there is no principle of precedence in Germany – neither in respect of German nor of foreign decisions –, the recent ruling of the Federal Supreme Court (Bundesgerichtshof, 15 April 2010, Xa ZB 10/09 – “Walzenformgebungsmaschine”) requires more than just regarding other decisions with favour. Every court has the obligation to deal with the arguments brought forward in other – German, EPO or foreign – decisions.

In this particular case, the Supreme Court ruled that the courts have to discuss all arguments brought forward in other decisions irrespective whether they refer to points of fact or of law. In particular, the Supreme Court stressed out this does also apply to the question whether the matter of a protective right has been obvious compared to prior art. The court reasoned that decisions of the EPO and other courts should be taken into account to fortify legal certainty and to further the harmonisation of jurisdiction under the EPC. But the court also made clear that this does not require courts to follow previous decisions if their reasoning does not agree after a profound examination.

In summary, this is a straight progress from earlier judgements taking into account other decisions as an expert's opinion concerning the facts of the case. Now, also points of law examined previously need to be addressed by and will be relevant for later decisions as far as the same legal questions are to be answered. Although this does not require the courts to deal with all arguments in writing, it must be clear from the decision that all relevant arguments have been considered.

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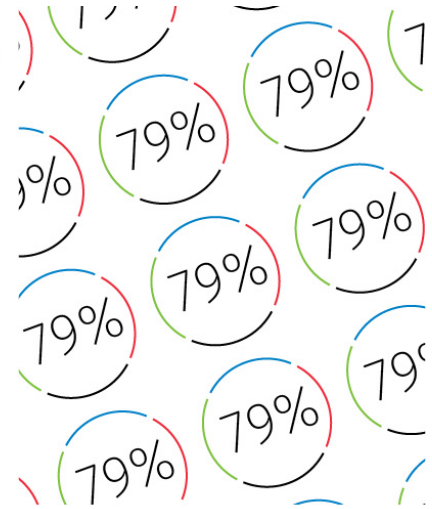
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