

Kluwer Patent Blog

AGA v. Occlutech, Court of Appeal The Hague (Gerechtshof Den Haag), 19 October 2010

Peter Burgers (Brinkhof) · Monday, November 15th, 2010

The Court of Appeal confirmed the First Instance Court decision and held that Occlutech's devices do not infringe AGA's patent regarding septal occlusion devices, which feature braided metal strands and have a collapsed configuration for delivery through a channel in a patient's body. The Court held – with reference to Article 69 EPC and the prosecution file – that AGA's patent is limited to devices which have clamps on the opposed ends of the device. Occlutech's septal occlusion devices, which instead have strands that are welded at one end of the device were held to fall outside of the scope of protection. The Court also dismissed AGA's argument of equivalence, because with the attacked devices occlusion is achieved in a 'substantially different way'.

This decision is in line with the judgments of the UK Court of Appeal in the parallel procedure but deviates from the German judgment, in which Occlutech was found to infringe AGA's patent. However, no reference to these foreign judgments is made.

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

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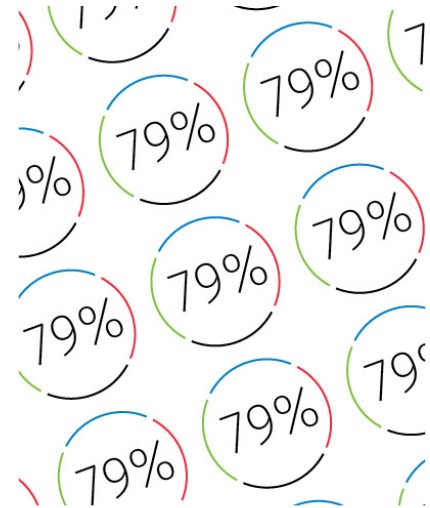
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This entry was posted on Monday, November 15th, 2010 at 4:31 pm and is filed under (Indirect) infringement, Case Law, literally fulfil all features of the claim. The purpose of the doctrine is to prevent an infringer from stealing the benefit of an invention by changing minor or insubstantial details while retaining the same functionality. Internationally, the criteria for determining equivalents vary. For example, German courts apply a three-step test known as Schneidmesser's questions. In the UK, the equivalence doctrine was most recently discussed in Eli Lilly v Actavis UK in July 2017. In the US, the function-way-result test is used.">Equivalents, Netherlands
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