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Judgement of the Appeal Court Karlsruhe on "Dringlichkeit" of preliminary injunction proceedings in patent cases.

Bernward Zollner · Wednesday, December 15th, 2010 · Landmark European Patent Cases

The Appeal Court Karlsruhe has recently issued a judgement in a preliminary injunction proceeding. Plaintiff has sought to obtain a confirmation of the first instance's judgement. Defendant had filed the appeal against the judgement by which he had been ordered to cease and desist from producing, offering and marketing the patent infringing devices after the parties had discussed at length tricky issues on validity of the patent as well as on infringement. In its judgement the Appeal Court Karlsruhe argued that a motion for a preliminary injunction in patent cases require the court to consider whether plaintiff has a particular need to obtain a judgement in a preliminary proceeding and that there is no legal assumption that this need does exist. Therefore, the court has to ascertain the particular circumstances. It is decisive whether the court can come to the conclusion that plaintiff can not be asked to line up with all other plaintiffs waiting for a regular oral hearing. It is also decisive that the court has considered all circumstances of the case and the conflicting interests of the parties. The first requirement in this context is that there are no difficulties in considering the infringement issue. Difficulties which could speak against a preliminary injunction proceeding do not only exist if a court's expert had to be appointed in a regular case on the merits. The second requirement is that there are no doubts as to the validity of the litigious patent. In the particular case the court had to consider a patent claim which concerned a device which could be screwed onto the external thread of a connecting piece whereby a retaining ring was deformed in such a way that a metal sealing was effected at the end of a metal hose.

Because the detailed description of the patent claim raised difficult issues in particular with respect to the term "by substantially axial introduction of force" the Appeal Court Karlsruhe had changed the first instance's judgement and dismissed plaintiff's motion thus granting defendant's appeal.

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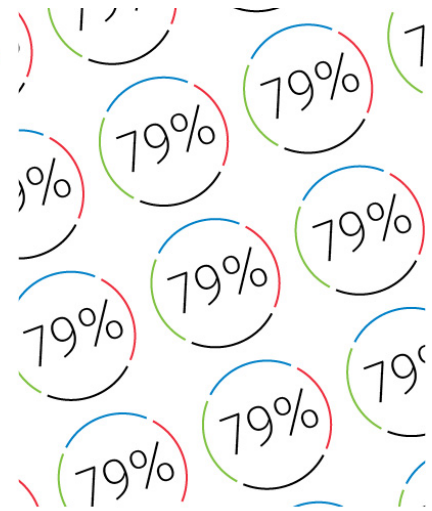
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