# Kluwer Patent Blog

## Procedural Supreme Court Decision just before the advent of new Federal Code of Civil Procedure in Switzerland

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In Switzerland, each of the 26 cantons must have a cantonal Civil Court that decides patent matters falling within the jurisdiction of said canton. The decisions rendered by those courts can be appealed to the Federal Supreme Court. In some cantons, an appeal to a Cantonal Court of Appeal is possible before the decision can be appealed to the Federal Supreme Court.

In a recently published decision (see case no. 4A_102/2010) between Novartis and Teva Pharma concerning a preliminary injunction rendered against Teva Pharma because of its product Fluvastatin-Teva Retard the Swiss Federal Supreme Court reminded the Civil Court of the Canton Basel-Stadt that the Federal Act on the Federal Supreme Court and not the Cantonal Code of Civil Procedure determines how and in what form a ruling that is subject to appeal to the Federal Supreme Court must be finalized and served on the parties.

The Federal Supreme Court reversed the decision rendered by the Civil Court of the Canton Basel-Stadt because the judgment did not contain a written statement of grounds. The parties were notified only orally about the decision. The Civil Court of Basel-Stadt will have to issue a new decision and add a written statement of reasons to it, respectively.

The recent Supreme Court decision illustrates the problems caused by the 26 codes of civil procedure in Switzerland.

Therefore, the Swiss patent litigation community eagerly awaits the new Federal Code of Civil Procedure that **will enter into force on 1 January 2011**. The new Federal Code of Civil Procedure will mark one of the most important developments in Swiss law since the unification of the substantive law in civil, commercial, and criminal matters at the beginning of the twentieth century. After the harmonization of the Swiss civil procedural law, the issue of missing reasoning and statements of ground should not arise anymore.

Further, the new Federal Patent Court is expected to take up work by 1 January 2012 (originally, it was expected to start on 1 January or 1 July 2011). The new Federal Patent Court will serve as the court of first instance in patent matters for the whole territory of Switzerland, replacing thus the courts in each of the 26 Swiss Cantons, which are the competent courts in such matters currently. The competence of the new court in patent matters includes actions for alleged infringement of patents as well as the validity of patents. The transitory provisions of the new Federal Patent Court Act provides for the transfer of all patent litigation cases which are then pending at the cantonal

courts to the Federal Patent Court  if the "main hearing" has not been held yet at the time when the new court start its operations, i.e. 1 January 2012. The transitory provisions do not clearly define the term "main hearing".

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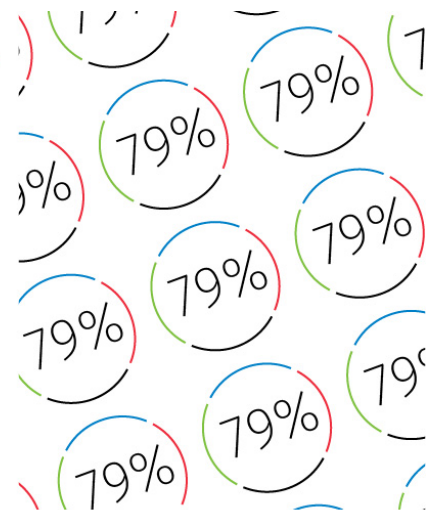
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