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German Epilady

Thomas Musmann (Rospatt Osten Pross) · Friday, January 28th, 2011

In Germany it is well established case law that in normal PI cases “urgency” is a requirement which is not fulfilled if plaintiff waits too long before initiating court proceedings (although the standards for “waiting too long” vary largely between the different courts).

In her post of 26 January Anja Petersen-Padberg reported about a decision of the Landgericht (1st Instance Court) Munich in which the Court dealt with the question whether “urgency” is required for ex parte search orders to secure evidence. The Munich Court decided that “urgency” is not required (decision of 20 October 2010, Docket No. 21 O 7563/10). This is in line with the opinion of the 20th Senate of the Oberlandesgericht (2nd Instance Court) Duesseldorf (decision of 30 March 2010, Docket No. I-20 W 32/10) which Senate is competent for copyright cases.

The opposite stance was taken by the Oberlandesgericht Cologne (decision of 9 January 2009, Docket No. 6 W 3/09) and Oberlandesgericht Karlsruhe (decision of 30 November 2010, Docket No. 6 W 160/10). They both require “urgency” with the consequence that the plaintiff has to file the request for a search order within one month after he had knowledge of the necessary facts.

We now have an indication that the Landgericht Duesseldorf tends to follow the approach of the Oberlandesgericht Cologne and Karlsruhe and thereby divert from the decision of the Oberlandesgericht Duesseldorf. It remains to be seen how the 2nd Senate of the Oberlandesgericht Duesseldorf which is competent for patent matters will decide the issue. The Presiding Judge Kühnen has indicated that he doesn’t see a reason for requiring “urgency”.

Diverging case law is not uncommon in preliminary proceedings in Germany. The reason for this is that the second instance is the final instance in these proceedings. Diverging case law, therefore, cannot be consolidated by the Bundesgerichtshof (Supreme Court).

Max v. Rospatt

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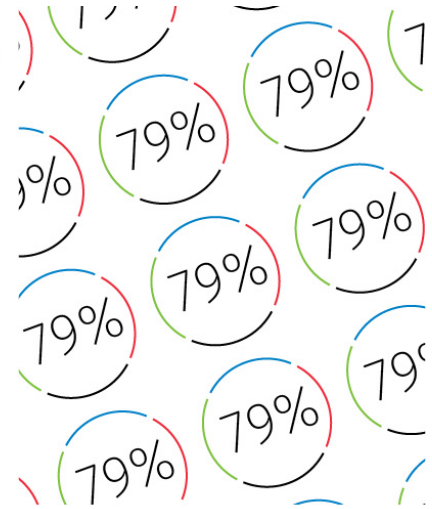
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