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German Federal Court of Justice confirms application of Comvik/Hitachi approach

Thorsten Bausch (Hoffmann Eitle) · Wednesday, February 23rd, 2011

The German Federal Court of Justice (BGH) recently further confirmed the basic tendency of bringing national case law into line with that of the European Patent Office. In the decision "Wiedergabe topographischer Informationen" (Reproduction of topographical information)BGH.Wiedergabe.topografischer.Informationen.X.ZR.47-07, the Federal Court of Justice had to deal with a method and device for the perspective display of a part of a topographic map, see European patent EP 0 378 271. The claims were found to lack an inventive step by the FCJ based on reasoning that conforms to the Comvik or Hitachi approach applied by the EPO. In other words, features relating to the perspective presentation of a map and associated transformations of coordinates and angles were judged as being non-technical features. For the assessment of inventive step, these non-technical features were taken as being given to the technically skilled person by a person of non-technical skill, such as cartographer.

Despite coming to the same final decision of revoking the patent, the FCJ overruled the Court of First Instance, the Federal Patent Court, which had concluded that the claimed method lacked technical nature under Article 52 EPC. The FCJ confirmed its own case law and that of the EPO Boards of Appeal by indicating that technical nature is given if data are processed, stored or transferred by means of technical devices, which is the case for the claim in question, as the method for the perspective display of a topographic map necessitates the use of a technical device.

The FCJ furthermore ruled that the providing of a user friendly representation of a topographic map is a technical object. It therefore appears that the FCJ thus refutes a further opinion of the Federal Patent Court, namely that concepts that rely on a user's improved perception of the displayed information are only an "ergonomic" goal and thus allegedly non-technical in nature.

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