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The doctrine of equivalents – where has EPC 2000 taken us?

Anders Valentin (Bugge Valentin) · Wednesday, February 23rd, 2011

For many years it has been heavily disputed in Danish and Nordic legal theory, whether the doctrine of equivalents should or should not be accorded weight in the construction of the protective scope of a patent.

While on the one hand it has been argued that the application of the doctrine could lead to – at best – unclear results, on the other it has been argued that a (too) strict and literal construction of the claim language would deprive the patentee of the (fair) scope of protection that his contribution to the state of the art merited.

Some practitioners have maintained that the (very old) theory of the protective scope being afforded by a patent should be assessed on the basis of what should be deemed to be the “core” of the invention patented – the so-called “core theory”.

In the view of many (this blogger included), article 69 EPC (and its protocol) should effectively have ended discussions as to whether the “core theory” is applicable to the assessment of a patent’s protective scope, but in Denmark we still see the “core theory” invoked in legal proceedings, not least in interlocutory injunction proceedings (which in Denmark are presided over by bailiff’s with no training or experience in the field of patent law).

With EPC 2000 and the amendments to the Protocol of Interpretation of Article 69 of the EPC, it was debated whether this might herald a “new” doctrine of equivalents, but in Denmark there is as yet no clear evidence of such a development in the wake of EPC 2000.

While according to legal theory the “core theory” has been long since abandoned in most jurisdictions, it would be interesting to learn whether the “core theory” has been applied in any decisions rendered after EPC 2000 and whether national decisions on the doctrine of equivalents are deemed to differ before and after EPC 2000.

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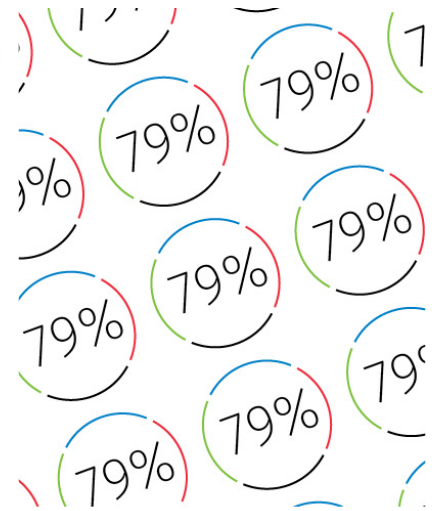
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This entry was posted on Wednesday, February 23rd, 2011 at 10:38 am and is filed under [Denmark](#), [EPC](#), literally fulfil all features of the claim. The purpose of the doctrine is to prevent an infringer from stealing the benefit of an invention 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

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