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Does the exposition of a product on a trade fair constitute a patent infringing act?

Hetti Hilge (Rospatt Osten Pross) · Monday, March 14th, 2011

While in the past the German courts generally presumed that exposing a product on a trade fair constituted an infringing offer and, hence, a danger of repetition, the District Court of Mannheim recently raised the burden of demonstration and proof for patent owners.

Following the (vague) reasoning of the Federal Supreme Court in a trademark case (Bundesgerichtshof, 22 April 2010, I ZR 17/05 – Pralinenform II), the Mannheim court found that the exposition of a product on an international trade fair in Germany did not necessarily constitute an infringing offer nor prove an intention to market the product within the territory of Germany (LG Mannheim, 29 Oct 2010, 7 O 214/10 – Sauggreifer). Without any findings of fact to the contrary, it was likewise possible that the product had merely been exhibited as part of the whole product portfolio and without the intention to offer it for (future) sale on the German market. Since the decision was granted in preliminary injunction proceedings, the court eventually left the legal question whether or not there was an infringing or imminent offer undecided and denied the injunction because it could not find for infringement with the necessary certainty.

Patent owners applying for an injunction should accordingly provide further evidence or indications that a product exhibited on a trade fair is in fact intended for (future) distribution within the territory of Germany.

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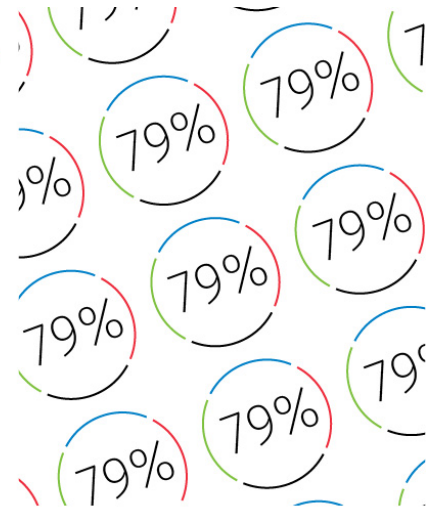
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