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# Kluwer Patent Blog

## Indirect requirement for urgency – follow up to inspection orders

Stephan von Petersdorff-Campen · Friday, August 19th, 2011 · Landmark European Patent Cases

by Stephan von Petersdorff-Campen

In my post of 28 April 2011, I reported that the Düsseldorf Appellate Court (Oberlandesgericht) does not require urgency for inspection orders, whereas urgency is required for preliminary cease and desist orders. Urgency means that the patentee is compelled to apply for an interim injunction in due time (approx. 1 month) after he has sufficient evidence for the infringement, i.e. the identity of the infringer and the contested device or process. But what if the patentee had failed to apply for an inspection injunction in due time? What if he waited several months before filing his request for inspection even though he knew that there could be a potential infringement in respect to which an inspection order would probably reveal the necessary evidence? Clearly, the inspection order would be granted by the court as urgency is no requirement, here. But would the court then grant a cease and desist order for which the patentee applies after the inspection proceedings have disclosed the evidence for the infringement? Possibly not. One can argue that the patentee is obliged in due time to gather all material accessible enabling him to prove sufficient indication for the infringement of his patent. This means that he would have to start inspection proceedings as soon as he becomes aware of a possible infringement to be elucidated with an inspection order.

Conclusion: Don't just wait and see, patentee, if you have any kind of indication for a potential patent infringement. Should you, at a later stage, wish to obtain a preliminary cease and desist order, there might be an indirect requirement for urgency, even for inspection proceedings.

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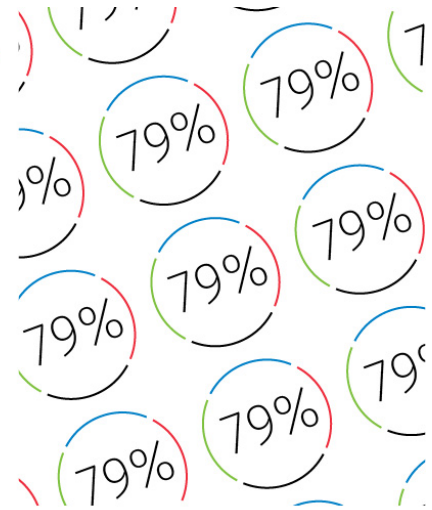
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