

Kluwer Patent Blog

Bernward Zollner · Wednesday, August 31st, 2011 · Landmark European Patent Cases

In a recent decision of 16 June 2011 the German Bundesgerichtshof has cancelled a decision of the German Bundespatentgericht because the Bundespatentgericht had not sufficiently respected the (constitutional) right of one of the parties to a fair hearing (“Verletzung des rechtlichen Gehörs”).

At the Bundespatentgericht the parties had discussed the validity of a German utility model. The Bundespatentgericht had confirmed the utility model in a restricted version. The owner of the German utility model (a big steel company) had appealed the decision of the Patent Office arguing that the utility model should be confirmed in the registered version without any restriction. The other party (also a steel company) had appealed the Patent Office’s decision in order to reach a complete cancellation of the utility model under discussion. In the written summons for the oral hearing the German Bundespatentgericht had stated in writing that the Court was inclined to confirm the decision of the Patent Office which both parties had attacked so that both appeals were expected to be dismissed. This view of the Court was not only repeated in two telephone conversations with the representative of the owner of the utility model but also at the beginning of the oral hearing. In the course of the oral hearing no additional issue came up. Upon the closing of the oral hearing the Bundespatentgericht had completely cancelled the utility model contrary to what the Court had preliminarily expressed. This situation was qualified by the German Bundesgerichtshof as a surprise-decision conflicting with the constitutional right to a fair hearing.

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