Kluwer Patent Blog

AGA Medical Corporation v. Occlutech GmbH, Supreme Court (Hoge Raad), 25 May 2012

Peter Burgers (Brinkhof) · Sunday, July 29th, 2012

The Dutch Supreme Court held that Art. 69 EPC in conjunction with art. 1 Protocol for the application of Art. 69 EPC provides a guideline for the determination of the scope of protection. Other “viewpoints” are the essence of the invention and the inventive idea behind the wording of the claims as opposed to the literal wording thereof. The Court may consider one or more of these viewpoints depending on the character of the invention, the patent description and the party debate.

Also, the Court rejected patentee’s argument that third parties are restricted to invoke the prosecution history for explanation of the patent. only in specific situations.

Click here for the full text of this case.

A summary of this case will be posted on http://www.KluwerIPCases.com

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This entry was posted on Sunday, July 29th, 2012 at 3:13 pm and is filed under Biologics, Case Law, 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, Extent of Protection, Netherlands
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