
Kluwer Patent Blog

Of Christmas tree stands and Christmas tree trunks

Markus Lenssen (Rospatt Osten Pross) · Friday, December 21st, 2012

As Christmas is coming closer, the “where is the Christmas stand?”-question comes up again. This little piece of engineering only used once a year is not only subject matter of several patents but has kept the Higher Regional Court of Düsseldorf busy, too (docket No. I-2 U 84/03).

Who could imagine that a Christmas stand would be characterised by not less than 18 features? And who could have guessed that having just one single power transmission device would make the difference? Most probably no one (at least not outside of the Christmas season) has ever thought about Christmas tree stands and their ability to keep abnormally contoured Christmas tree trunks in such depth as the court had to do in this case.

The judgement is a good example of the problem-solution-approach when the court discussed the question of infringement by equivalent means. The patent was aimed at providing a Christmas tree stand to conveniently fix even Christmas trees with abnormally contoured tree trunks. But as the attacked embodiment failed to solve this – according to the experience of the court not uncommon – problem, they did not find for infringement.

To put it in a nutshell: Wise the man who chooses their Christmas tree stand according to the normality or abnormality of their Christmas tree’s trunk. Therefore: Merry Christmas to all readers!

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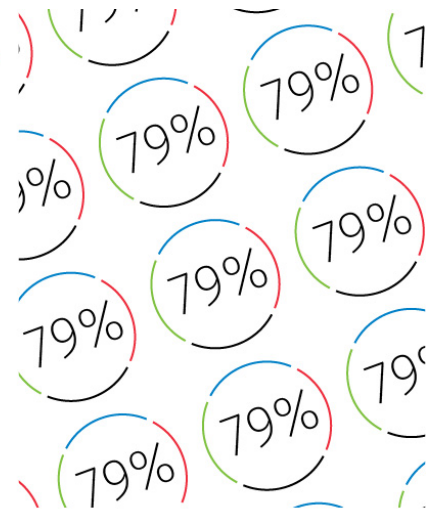
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This entry was posted on Friday, December 21st, 2012 at 8:11 pm and is filed under literally fulfil all features of the claim. The purpose of the doctrine is to prevent an infringer from stealing the benefit of an invention by changing minor or insubstantial 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, Germany

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