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Düsseldorf Higher Regional Court confirms case law on the issuance of preliminary injunctions against generic companies

Thomas Musmann (Rospatt Osten Pross) · Friday, June 7th, 2013

by Stefan Lieck

In a judgement of 17 January 2013 (docket no. I-2 U 87/12), the Düsseldorf Higher Regional Court confirmed its previous case law according to which the issuance of a preliminary injunction against generic companies based on patent law is possible under less stringent conditions.

According to the case law of the Düsseldorf Higher Regional Court, a preliminary injunction may only be issued if the validity of the asserted patent may be assumed to be sufficiently certain. This is generally the case only if the patent has already survived the first instance of opposition or nullity proceedings (OLG Düsseldorf – Olanzapin; OLG Düsseldorf – Harnkatheterset). In exceptional cases, this requirement may be waived, i.e. if extraordinary circumstances prevail in which the patent proprietor, due to the prejudice he threatens to suffer from a continuation of the acts of infringement, cannot be expected to wait for the outcome of opposition or nullity proceedings (OLG Düsseldorf, – Harnkatheterset). In the opinion of the Düsseldorf Higher Regional Court, such circumstances are regularly present if generic companies commit infringements which regularly threaten to cause the patent proprietor great irreparable harm, while the possible damage for the generic company may, as a rule, be fully compensated by damages claims.

In the specific case at hand, the preliminary injunction was issued, because the Court concluded in its assessment of the validity of the asserted patent, upon having performed the required summary review, that the attacks on validity made by the generic company appeared to be unfounded, in particular because the allegedly most relevant citation had already been considered in the prosecution proceedings.

In summary it can therefore be noted that preliminary injunctions in patent law cases against generic companies may be obtained from the courts in Düsseldorf, even if the validity of the asserted patent has not been established in first-instance opposition or nullity proceedings yet.

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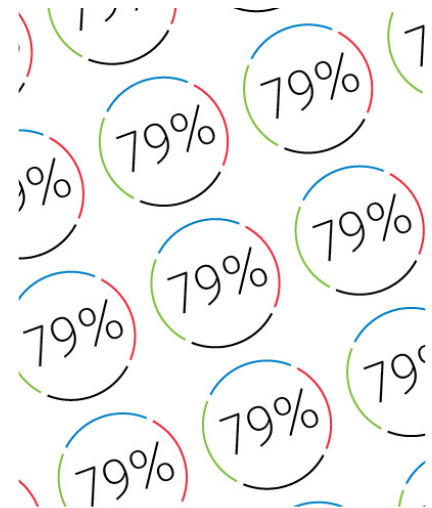
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