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The patent claim as a technical teaching in its literal sense

Markus Lenssen (Rospatt Osten Pross) · Friday, October 11th, 2013

In its decision “Fahrradkurbeleinheit” (“bike crank assembly”) the Higher Regional Court of Düsseldorf has lifted an injunction by the Regional Court of Düsseldorf on appeal (OLG Düsseldorf, I-2 U 78/12, 20 June 2013). Contrary to the first instance the court did not find for patent infringement. Questions of literal and equivalent infringement have been discussed and the court gave some useful guidance on the interpretation of patent claims.

One of the issues of the case was whether the claim wording “formed on” required two parts – if not being integral – to be at least firmly connected to each other. Here, the court stated that “formed on” did not necessarily mean that the one part formed on is actually welded or glued to the other part. Also connections that can be released again are thinkable and could fall under the patent claim in principle. However, as the patent claim altogether was aimed at a bicycle crank that naturally turns around as part of the drive mechanism, “formed on” could only be understood as being in torque proof connection with the bike crank in this case.

In this context, the court confirms its earlier case law “Synchronmotor” (OLG Düsseldorf, I-2 U 120/09, 17 March 2011). According to this case law, each patent claim has to be understood as a technical teaching for the averagely skilled person according to which the result of the invention can be reached by simply following the instructions of the patent claim. Therefore, patent claims can be drafted as a detailed instruction on how to establish the invention – even though they are product claims and not process claims. According to the court, any features of a patent claim that do not leave questions open that cannot be answered with the general knowledge of the skilled person have to be interpreted in a way so that a suitable and, most importantly, operational device in the sense of the invention is gained. Therefore, in this particular case, there was only one way to interpret “formed on”, namely as being in torque proof connection.

As this was not the case with the attacked embodiment, also the doctrine of equivalence was discussed. According to the doctrine of equivalence, the equivalent arrangement has to be of the same effect, it must be detectable for the person skilled in the art and it has to be comparable to the idea of the patent claim. As so often, the court did already neglect the first requirement. The court ruled that the requirement of the same effect is not related to the device as a whole but to the single feature that is deemed to be replaced by an allegedly equivalent feature. Already the allegedly equivalent feature has to show the same effect as the original feature. That hurdle could not be taken by the plaintiff here. The advantages of the relevant feature could not be reached by the different feature of the attacked embodiment, although the device as a whole did allow for very similar advantages in the end.

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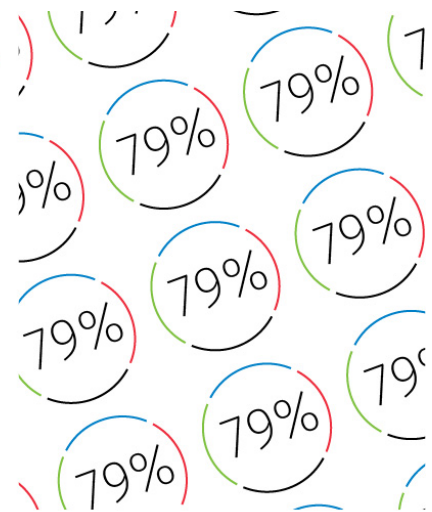
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