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# Kluwer Patent Blog

## Forfeiture of Claims for Patent Infringement

Thomas Musmann (Rospatt Osten Pross) · Friday, December 20th, 2013

Under the legal principle of forfeiture of claims a patentee can deprive himself of claims for patent infringement if he asserts them in legal proceedings at such a late stage (time factor) that the infringer from an objective perspective could trust that he would not anymore be subjected to the claims and has made dispositions in that trust (circumstance factor). The Supreme Court has set a very high threshold for both factors such that the forfeiture defense has had no practical relevance.

Recently, the Supreme Court did, however, reject to hear a revision against a decision by which the Dusseldorf appeal court has rejected the patentee's claims for patent infringement due to forfeiture. The appeal court's decision was based on the following facts:

The patentee had send a warning letter to alleged infringer on 17 March 1993 claiming that their hood stretch packaging apparatus infringed the method claim indirectly and an according product claim directly. in July 1997 the patentee filed suit for patent infringement based on the allegation of indirect infringement of the method claim only. In June 2009 the patent expired. In August 2009, the case was pending with the appeal court, the patentee filed suit by way of extension claiming direct infringement of the product claim in addition to indirect infringement of the product claim.

By decision dated 2 August 2012 the appeal court accepted the extension of the lawsuit and dismissed the action for indirect infringement of the product claim due to forfeiture. It argued that in this case the time factor was so extreme with the lawsuit having been filed more than 16 years after the warning letter at a time when the patent had already expired that it was sufficient for the circumstance factor that the infringer had not set up a provision for possible damages.

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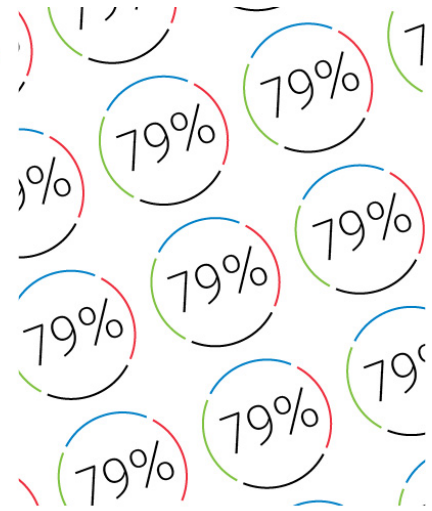
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