
Kluwer Patent Blog

Is the Federal Patent Court obliged to appoint a technical expert?

Thomas Musmann (Rospatt Osten Pross) · Friday, September 26th, 2014

by Bernward Zollner

In a recent decision of the Federal Supreme Court dated 26 August 2014 (docket-No. X ZB 19/12) a further appeal of an applicant pursuing his patent application was rejected. Already the German Patent and Trademark Office had rejected the patent application. The Appeal of the applicant against this decision had been rejected by the Federal Patent Court. Against this decision the applicant submitted a further appeal to the Federal Supreme Court arguing that the Federal Patent Court should have appointed a technical expert. The Federal Supreme Court has rejected this further appeal.

In the reasoning it is pointed out that the Technical Senate of the Federal Patent Court does have the technical experience and know how to evaluate technical factual situations for the decisions to be handed down. This does, however, not exclude that in a particular situation the appointment of an external technical expert may be suitable or may even be necessary if the particular case concerns technical questions which cannot be adjudicated by the (technical) judges of the Federal Patent Court. Not appointing an external technical expert can be a reason for a further appeal, however, only particular factual circumstances which were not shown in this further appeal could be a reason for the Federal Patent Court to appoint an external expert in order to be able to evaluate technical questions raised in a particular technical field.

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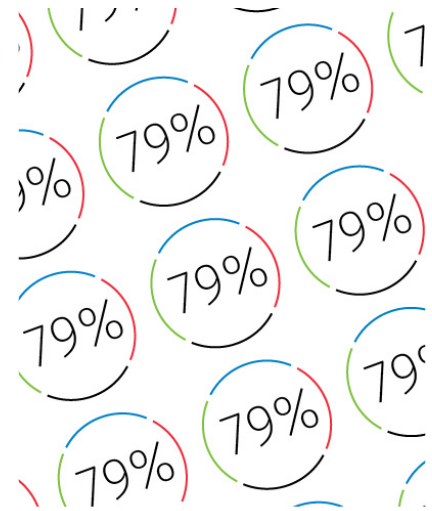
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