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# Kluwer Patent Blog

## The Federal Court of Justice Affirms the Bifurcation of Patent Litigation in Germany

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In a recent judgment the Federal Court of Justice (Bundesgerichtshof – BGH) decided on the question of whether the infringement court is bound by an interpretation of the patent in suit the BGH has rendered in a nullity action concerning the same patent ([judgment of June 2, 2015, court docket: X ZR 103/13 – Kreuzgestänge](#)).

The background of this case is the bifurcation of patent litigation in Germany. Whereas the civil courts deal with infringement actions, validity actions have to be filed with the Federal Patent Court in Munich. The last instance court in both, infringement and validity actions, is the BGH located in Karlsruhe.

In the case decided by the BGH the subject matter of the patent in suit was a collapsible stroller for children. In previous nullity proceedings the BGH had upheld the patent and expressed that one feature of the patent had to be construed in a specific way. In infringement proceedings the Düsseldorf Higher Regional Court (Oberlandesgericht Düsseldorf – OLG Düsseldorf) regarded itself to be bound by this specific interpretation and therefore dismissed the plaintiff's action.

In appeal proceedings against the judgment of the OLG Düsseldorf the BGH rejected the reasoning of the lower instance court and decided that the infringement court had to interpret the patent in suit independently. It was neither legally nor de facto bound by an interpretation expressed by the BGH in a nullity action concerning the same patent.

The BGH admitted, though, that a diverging interpretation by the infringement court would create a ground to allow an appeal against the lower instance court decision. However, the BGH also held that in this case it would have to examine the plausibility of its own previous case law.

The present decision continues the case law of the BGH on the coordination of infringement actions and validity actions pertaining to the same patent. In its judgment the BGH affirms the bifurcation of patent litigation in Germany.

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