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Germany: Polymerschaum II, Federal Court of Justice of Germany, X ZR 101/13, 9 June 2015

Jochen Buehling (Krieger Mes Graf & v. der Groeben) · Wednesday, January 13th, 2016

The Federal Court of Justice held that claim construction has absolute priority before issues of invalidity, such as the inadmissible extension or issues of patentability of the subject matter, can be discussed. The Court also reiterated that the determination of the subject matter of a patent (the invention) cannot be abandoned with the mere reason that a certain feature is unclear and therefore not suitable to distinguish the subject matter from prior art. This is in line with the decision “Rotorelemente”, which the Court issued about a month earlier.

A [full summary](#) of this case has been published on [Kluwer IP Law](#).

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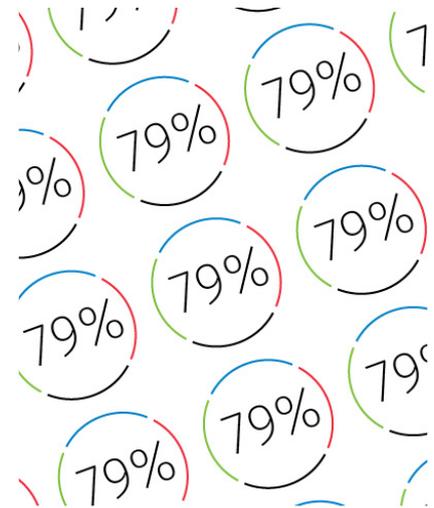
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