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EPO: T 1852/13, European Patent Office, Board of Appeal, ECLI:EP:BA:2017:T185213.20170131, 31 January 2017

Lars de Haas (V.O.) · Wednesday, May 3rd, 2017

An EPO board of appeal expressed its opinion that EBA case law implied that no further use should be made of the three-part “essentiality test” of T 331/87, for deciding whether removal of a feature from a claim complies with article 123(2) EPC. The only test endorsed by the EBA was the “gold standard”. The objections in G2/98 against using an evaluation of functional essentiality for judging priority also applied to judging amendments. Furthermore, the essentiality test (cf. the Guidelines H V 3.1) could not replace the “gold standard” because it could lead to different results

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

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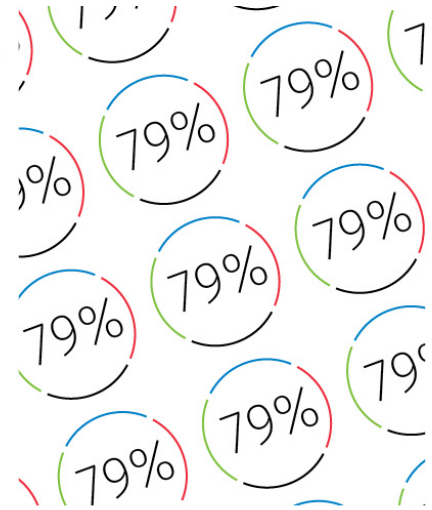
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