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Disclosure for enabling is different from disclosure for novelty-test

Thomas Musmann (Rospatt Osten Pross) · Thursday, August 3rd, 2017

by Bernward Zollner

It is often worthwhile to read again former judgments of the German Bundesgerichtshof. In a judgment of 13 July 2010 – docket no. Xa ZR 126/07 – the court has discussed a patent on a staple cartridge for staples for surgical purposes (“Klammernahtgerät”). The court has stated that a disclosure is enabling if the person skilled in the art can achieve the technical result which is described with the features of the patent claim. This does not require that at least one possible embodiment of the invention be disclosed in detail as it is required indeed for a novelty destroying anticipation. The term “disclosure” is different depending on the context in which the term is being used. An enabling disclosure does not necessarily require the complete disclosure of a particular example. Also an attacked embodiment does not need to be disclosed as embodiment in the patent specification when it shall be brought within the scope of the patent claim.

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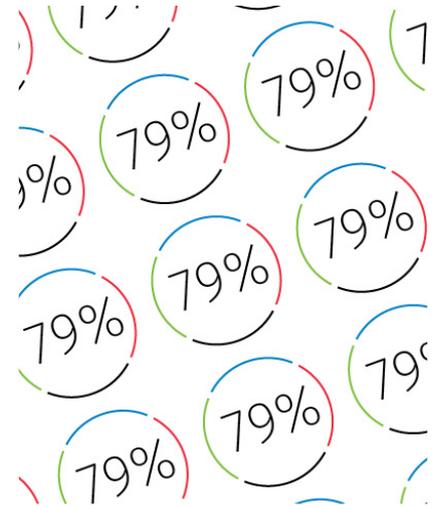
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