
Kluwer Patent Blog

Patent case: Schutzverkleidung, Germany

Christian Buchholz (Krieger Mes & Graf v. der Groeben) · Wednesday, April 22nd, 2020

The Federal Court of Justice made the following findings in relation to the material and personal scope of the right to prior use:

1. Where a pre-used embodiment does not implement all features of the patent claim, a modification of the pre-used embodiment which implements all the features is not covered by the right of prior use.
2. The limits of the right of prior use may be exceeded if an additional advantage is realised with the modification which was not realised by the pre-used embodiment. In particular, this may be the case where a modification corresponds to an embodiment which is highlighted in a dependent claim or in the description of the patent because of this additional advantage.
3. Where the pre-used embodiment used one of two alternatives which are mentioned as fully equivalent in the patent claim, a modification which implements the other alternative is also covered by the right of prior use.
4. The manufacturer of individual parts which can only be assembled in a technically and economically sensible way to form a device which gives rise to the right of prior use is the holder of such right even if he or she does not assemble the parts themselves.
5. Under the circumstances of point 4, the manufacturer of the individual parts may also use a process protected by the patent, provided that the procedural instructions of the process claim are limited to teaching the only technically and economically sensible assembly

Case date: 14 May 2019

Case number: X ZR 95/18

Court: Federal Court of Justice of Germany

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

To make sure you do not miss out on regular updates from the Kluwer Patent Blog, please

subscribe here.

Kluwer IP Law

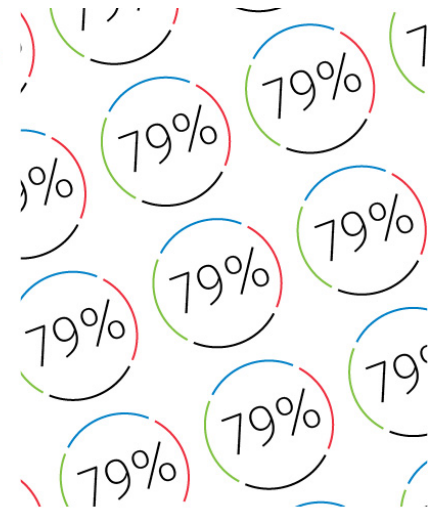
The **2022 Future Ready Lawyer survey** showed that 79% of lawyers think that the importance of legal technology will increase for next year. With Kluwer IP Law you can navigate the increasingly global practice of IP law with specialized, local and cross-border information and tools from every preferred location. Are you, as an IP professional, ready for the future?

Learn how **Kluwer IP Law** can support you.

79% of the lawyers think that the importance of legal technology will increase for next year.

Drive change with Kluwer IP Law.

The master resource for Intellectual Property rights and registration.



2022 SURVEY REPORT
The Wolters Kluwer Future Ready Lawyer
Leading change

This entry was posted on Wednesday, April 22nd, 2020 at 1:53 pm and is filed under [Case Law](#), [Germany](#), [Prior use right](#). You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. Both comments and pings are currently closed.