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Patent case: Regeneron Pharmaceuticals Inc. vs. Amgen, Inc., UPC

Bart van Wezenbeek (Hoffmann Eitle) · Thursday, September 26th, 2024

When interpreting a patent claim, the person skilled in the art does not apply a philological understanding, but rather determines the technical meaning of the terms used with the aid of the description and the drawings. From the function of the individual features in the context of the patent claim as a whole, it must be deduced which technical function these features actually have individually and as a whole. The patent description may represent a patent's own lexicon. A claimed invention is to be considered the "same invention" as meant in Article 87 EPC (priority right) if the skilled person can derive the subject-matter of the claim directly and unambiguously, using common general knowledge, from the previous application as a whole. The assessment of inventive step starts from a realistic starting point in the prior art. There can be several realistic starting points. It is not necessary to identify the "most promising" starting point. In general, a claimed solution is obvious if the skilled person would be motivated to consider the claimed solution and would implement it as a next step in developing the prior art. It may be relevant whether the skilled person would have expected any particular difficulties in taking any next step(s). The absence of a reasonable expectation of success does not follow from the mere fact that other ways of solving the underlying problem are also suggested in the prior art and/or (would) have been pursued by others. The decisive question that has to be answered is whether the claimed solution is non-obvious. For assessing inventive step, it is sufficient (but also necessary) for denying inventive step that the skilled person would without inventive contribution arrive at a result which is covered by a claim. A technical effect or advantage achieved by the claimed subject matter compared to the prior art may be an indication of inventive step. A feature that is selected in an arbitrary way out of several possibilities cannot generally contribute to inventive step.

Case date: 16 July 2024

Case number: CFI 14/2023586764/2023459916/2023

Court: UPC Central Division of the Court of First Instance Munich

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

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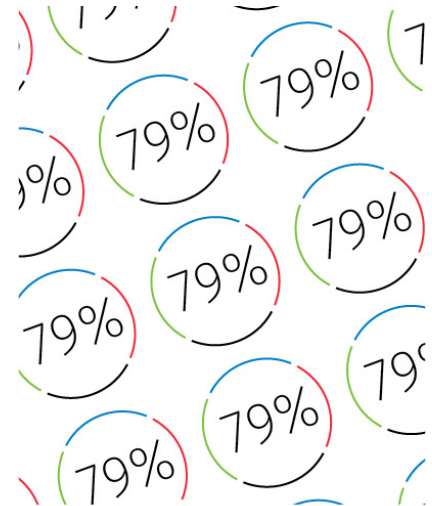
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