

Recent Case Law in German Patent Law



2015



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FOREWORD

In this year's review of case law, we needed to insert a separate section on "patent interpretation" at the beginning. The need arose from a conflict between the two courts of instance for revocation matters (the Federal Patent Court and the Federal Court of Justice), and there could hardly be a legal issue of greater importance for patent law as a whole (and hence also for infringement proceedings). The issue concerns the relationship between the claims of a patent and the description of the invention. In an impressive series of four judgements, the Federal Court of Justice has (once again) lent added weight to the patent specification as such.

A judgement on equivalent patent infringement can again be found in the section headed "Patent infringement". Among the various noteworthy judgements on "Validity", those reflecting the new (?) principles of patent interpretation crop up once more.

Things are gradually calming down in the field of revocation procedure. The main issues relating to the new

procedural law appear to have been clarified, so this Case Law Review includes discussion of just two judgements in that regard.

From our own vantage point, the past year was indelibly marked by groundbreaking developments in connection with "standard-essential" patents (SEPs). The European Court of Justice (finally) published its landmark judgement in the case Huawei vs. ZTE – and all parties (patent proprietors and patent users) now think they know what to do. The first judgements handed down by the courts of instance and referring the ECJ precedent are commented upon in this Case Law Review.

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I. INTERPRETATION OF PATENTS

1. Limits of the wording?

Federal Court of Justice, judgement of 14.10.2014, X ZR 35/11 – Zugriffsrechte

Federal Court of Justice, judgement of 19.05.2015, X ZR 48/13 – Übertragungsleistung

Federal Court of Justice, judgement of 13.10.2015, X ZR 74/14 – Luftklappensystem

Federal Court of Justice, judgement of 12.05.2015, X ZR 43/13 – Rotorelemente

BACKGROUND

The primacy of the claims in a patent, the decisive factor for determining the scope of protection conferred, is clearly defined in Section 14 PatG (and also with the same wording in Article 69 EPC) – the scope of protection conferred by the patent is determined by the claims, and the rest of the patent specification (the description and drawings) is referred to solely for the purpose of interpreting those claims.

In a noteworthy series of decisions addressing this dichotomy between claims and the material for interpreting them, the Federal Court of Justice has now emphasised the importance of the material aiding interpretation and has ruled that the wording of the claim itself (taken in isolation) cannot be the sole criterion.

DECISIONS

The rationale of the *Zugriffsrechte* decision is comparatively easy to follow. In the case dealt with there, the (revocation) judgement at first instance had arrived at an interpretation of the claim that contradicted, unnecessarily, the description of the invention.

That judgement has now been repealed by the Federal Court of Justice: an interpretation of the claim that would entail none of the embodiments described in the patent specification being included in the subject-matter of the patent can only be considered under very narrowly defined conditions, namely only when other possible interpretations which lead to at least some of the embodiments being included are absolutely out of the question, or when sufficiently clear indications can be found in the claim that something is actually being claimed that deviates so extensively from the description.

The facts of the case were similar in the *Übertragungsleistung* judgement, where the (revocation) judgement at first instance attached a particular meaning to the claim, without having concerned itself at all with the rest of the contested patent specification. However, that presumed meaning contradicted not only the other feature groups of the claim itself, but also the function that the feature in question was supposed to perform, according to the description of the invention.

The Federal Court of Justice now comes to the opposite conclusion and emphasises in the appeal judgement that these contradictions could have been avoided. The Federal Court of Justice was able to interpret the patent in a way that harmonised with the patent specification as a whole and which also keeps within the limits imposed by the wording of the claim.

In the headnote of its recent *Luftklappensystem* judgement, the Federal Court of Justice establishes the



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