

# Recent Case Law in German Patent Law



2020

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## CONTENT

Foreword .....	2
I. Patent Interpretation	
1. Indications of purpose .....	3
<i>Federal Court of Justice, judgment of 20.08.2019, X ZR 84/17 – Kommunikations-         vorrichtung</i>	
2. Purpose and means .....	5
<i>Federal Court of Justice, judgment of 24.09.2019, X ZR 62/17 – Lenkergetriebe</i>	
II. Patent infringement / Claims	
3. Acts committed abroad .....	8
<i>Düsseldorf District Court, judgment of 28.07.2020, 4a O 53/19 – Online-Sehtest</i>	
III. Validity	
4. Reasonable expectation of success .....	10
<i>Federal Court of Justice, judgment of 21.01.2020, X ZR 65/18 – Tadalafil</i>	
<i>Federal Court of Justice, judgment of 07.07.2020, X ZR 150/18 – Pemetrexed II</i>	
5. Generally available tool.....	17
<i>Federal Court of Justice, judgment of 17.12.2019, X ZR 115/17 – Autoantikörper-         nachweis</i>	
6. Technicity.....	20
<i>Federal Court of Justice, judgment of 14.01.2020, X ZR 144/17 – Rotierendes Menü</i>	
7. (Im)permissible broadening.....	22
<i>Federal Court of Justice, judgment of 13.02.2020, X ZR 6/18 – Bausatz</i>	
IV. Other issues in substantive law	
8. Standard-essential patents / FRAND principles .....	26
<i>Federal Court of Justice, judgments of 05.05.2020 and 24.11.2020, KZR 36/17 /         KZR 35/17 – FRAND-Einwand I / FRAND-Einwand II</i>	
<i>Karlsruhe Upper District Court, judgment of 25.11.2020, 6 U 103/16 – Vorübergehende         Identität II</i>	
<i>Düsseldorf District Court, court order of 26.11.2020, 4c O 17/19 – Nokia-SEP</i>	
<i>Düsseldorf District Court, judgment of 07.05.2020, 4c O 44/18 – Parität</i>	
<i>Munich Upper District Court, judgment of 12.12.2019, 6 U 5042/19 – Anti-Suit-Injunction</i>	
9. Co-inventors .....	33
<i>Federal Court of Justice, judgment of 09.06.2020; X ZR 142/18 – Penetrometer</i>	
V. Developments in legal policy	
10. The Unified Patent Court (UPC) .....	36
11. Reform of the German Patent Act .....	37

## FOREWORD

Among the classic topics in patent law, there are two in particular that stand out this year. Indications of purpose in patent claims have featured (yet again) in landmark decisions of the Federal Court of Justice, and the validity of patents in the fields of chemistry and biology depends increasingly on the skilled person's expectations of success when taking suggestions known from the prior art and trying to improve on them. A high expectation of success is generally seen as an argument against inventiveness, and this was elaborated on in detail by the Federal Court of Justice last year.

For standard-essential patents, 2020 marked a turning point. For the first time since the Huawei/ZTE judgment was handed down by the European Court of Justice, the Federal Court of Justice was able to continue its FRAND case law, and it uses that opportunity to reject the special route taken by the courts of instance in Germany when

interpreting the Huawei/ZTE judgment. From now on, also in Germany, a more holistic view of the rights and obligations of the parties will apply. This should put paid to fragmentary analysis of the individual steps in negotiation.

Practitioners were looking forward especially to the stance adopted by the Federal Court of Justice with regard to the granting of licences in communities of co-inventors – hitherto a blank spot in the law on co-inventorship. The result, as we shall show, is disappointing.

Finally, we also report on important developments in legal policy – the preparations for the unitary patent and the planned reform of the German Patent Act.

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