

Recent Case Law in German Patent Law



2018



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FOREWORD

Functional interpretation is a recurrent thread running through this year's case law review. Purposive and functional specifications in a claim can contribute to validity if they describe the claimed subject-matter spatially and constructionally from the perspective of a person skilled in the art, in other words if the skilled person knows how the purposive and functional specification is to be implemented and he can in fact infer constructional guidance from it. If that is the case, however, the feature must also be subjected to examination in infringement proceedings.

In order to collate these and similar patent interpretation issues that may impact infringement and validity proceedings alike, we depart in this year's review from our previous structuring and introduce a separate section in which we report on judgments relating (primarily) to patent interpretation.

A recent judgment handed down by the Federal Constitutional Court could make it more difficult to conduct temporary injunction proceedings, particularly when an ex-parte injunction is sought (i.e. without the opponent being heard).

In the courts of instance, there is one judgment on the granting of licences in communities of co-inventors that stands out, and some interesting new twists on standard-essential patents, that will be music in the ears of patent pool managers, are emanating from the Düsseldorf courts.

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