

Recent Case Law in German Patent Law



2022

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FOREWORD

This year's Case Law Review heralds a new era: we focus here one last time on the case law of the German courts, and on a landmark judgment by the European General Court on German patent law, after referral by the Munich Regional Court I. We look forward to the strong likelihood of being able to comment, in our annual review from next year onwards, on the first judgments handed down by the Unified Patent Court, in a broader case law context relating to German patent law.

We anticipate that the case law established during the early years of the Unified Patent Court will produce some landmark judgments in both formal and substantive respects. A similar situation reigned at the time when the first decisions of the Boards of Appeal and the Enlarged Boards of Appeal at the EPO were handed down. Then also, and analogously to the start of the Unified Patent Court, practitioners awaited, in some cases with considerable alertness, in others with concern, in yet others with positive anticipation, how the EPO Boards of Appeal would affect and thus help develop established legal practice on patent law matters in Germany. One fact that can be established in the meantime is that the decisions of the EPO Boards of Appeal have advanced both European and German patent law in some essential and valuable respects. Until now, European patents have been subject to the strict rule that European patent infringement issues are treated in accordance with national law.

That rule is now undergoing a fundamental change: from June 2023 onwards, the Unified Patent Court will have jurisdiction as an international court for issues concerning not only the validity but also the infringement of both future

unitary patents and non-opted out European patents. With the Rules of Procedure of the Unified Patent Court, a new multinational code of procedure will now be applied that is unique worldwide and rooted, owing to its history, not only in continental European and Romanesque law, but also in Anglo-American law.

We look forward to shaping the case law of the Unified Patent Court in its early stages, together with our clients. In our future Case Law Reviews of German patent law, we will also include discussions of pertinent judgments by the various instances of the Unified Patent Court.

However, even the new court will build on foundations that already exist. Questions concerning interpretation, validity and infringement, as well as procedural and substantive legal issues will be decided by a new court, but guided by the concept of harmonisation. However, the national courts will still retain certain powers and competences even after the Unified Patent Court Agreement has entered into force and the new court has started its work. German law, specifically, will also acquire particular importance as applicable law pursuant to Article 7 (3) of Regulation (EU) No. 1257/2012 on enhanced cooperation in the area of the creation of unitary patent protection.

Against this background, we are pleased that this year we can again present and provide commentary on a broad selection of rulings on German patent law.

We wish you a pleasant read!

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EISENFÜHR SPEISER



Bremen

Am Kaffee-Quartier 3
28217 Bremen
Tel. +49 421 3635-0
Fax +49 421 3378788
mail@eisenfuhr.com



Munich

Arnulfstraße 27
80335 Munich
Tel. +49 89 549075-0
Fax +49 89 55027555
mailmuc@eisenfuhr.com



Berlin

Stralauer Platz 34
10243 Berlin
Tel. +49 30 841887-0
Fax +49 30 841887-77
mailbln@eisenfuhr.com



Hamburg

Johannes-Brahms-Platz 1
20355 Hamburg
Tel. +49 40 309744-0
Fax +49 40 309744-44
mailham@eisenfuhr.com