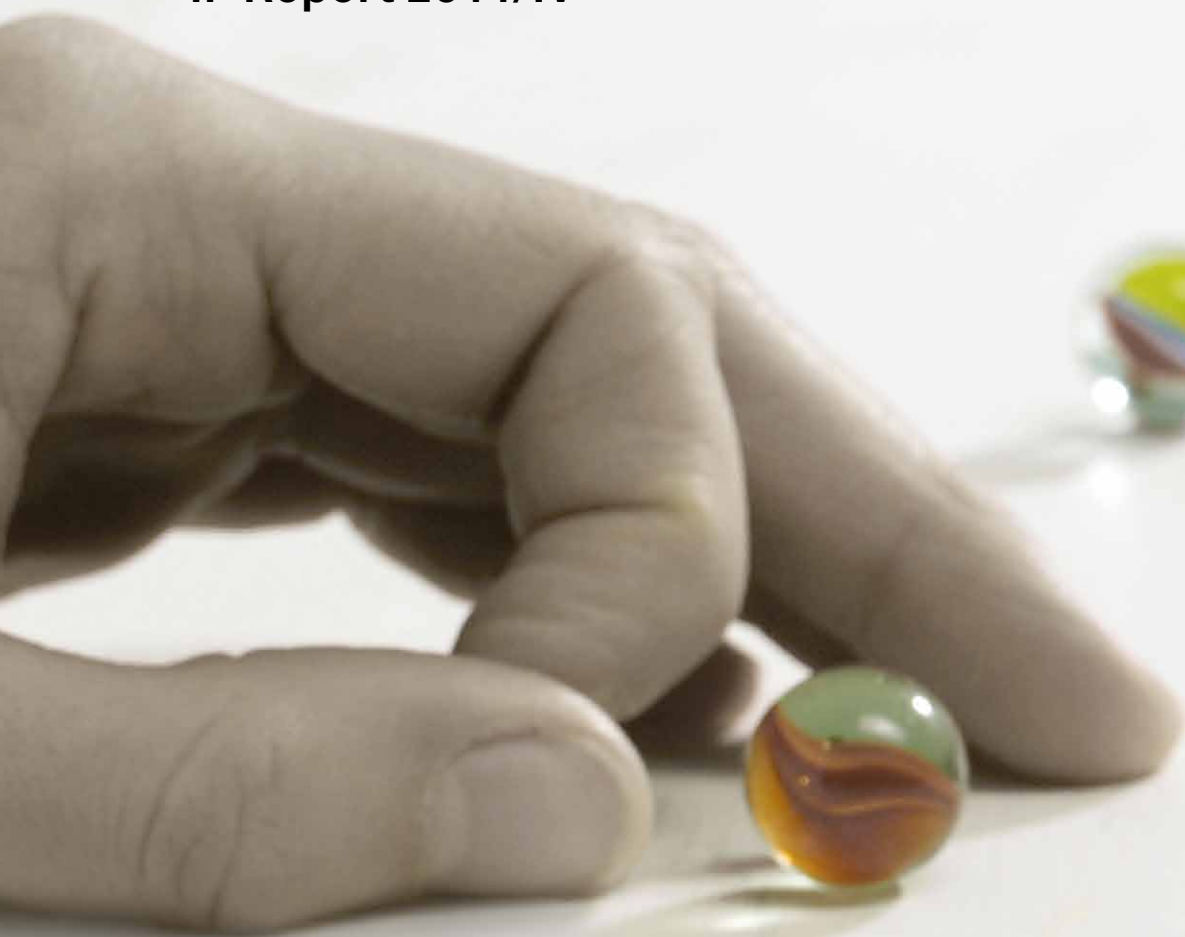




**IP Report 2011/IV**

**BARDEHLE  
PAGENBERG**



---

**Patent Law**

---

- 3 1. German Federal Supreme Court on patent revocation on the grounds of unlawful usurpation (decision of February 22, 2011 – Case X ZB 43/08 – Schweißheizung/Welding Heater)
- 5 2. German Federal Supreme Court on inventiveness according to the “problem” in the description and objection of clarity in German nullity proceedings (decision of March 1, 2011 – Case X ZR 72/08 – Kosmetisches Sonnenschutzmittel III/Cosmetic Sun Screen III)
- 7 3. German Federal Supreme Court on the standing to sue of a patentee having granted a royalty-free exclusive license (decision of April 5, 2011 – Case X ZR 86/10 – Cinch Stecker/Cinch Plug)
- 9 4. German Federal Supreme Court: Nullity action lodged during pending opposition proceedings inadmissible even if based only on a national prior right (decision of April 19, 2011 – Case X ZR 124/10 – Mautberechnung/Toll Calculation)
- 11 5. European Patent Office: Notorious prior art and the necessity of an additional search by the Examining Division (decisions of June 6, 2011 – Case T 1411/08 – and May 12, 2011 – Case T 2127/09)
- 14 6. European Patent Office: Refund of examination fee after withdrawal of application – legal Board of Appeal disapproves restrictive Office practice (decision of July 21, 2011 – Case J 25/10 – Catheters having linear electrode arrays/Medtronic Vascular)
- 17 7. European Patent Office: Enlarged Board of Appeal renders decision on disclaimers for disclosed embodiments (decision of August 30, 2011 – Case G 2/10 – Disclaimer/The Scripps Research Institute)

---

**Trademark Law**

---

- 20 8. Court of Justice of the European Union: Liability of purchasers of “keywords” for trademark infringement – “Double identity” infringement and infringement of “reputation” marks (decision of September 22, 2011 – Case 323/09 – Interflora v Marks & Spencer – Interflora)
- 24 9. Munich Appeal Court confirms likelihood of confusion between L’Oreal’s ACQUA DI GIO’ and DI GIOIA (decisions of July 21, 2011 – Cases 29 U 1031/11 and 29 U 1420/11)

---

**Design Law**

---

- 25 10. General Court of the European Union: The greater the designer’s freedom the less likely minor differences will produce a different overall impression (decisions of September 9, 2011 – Cases T-10/08 and T-11/08 – Kwang Yang Motor v Honda Giken)

---

**1. German Federal Supreme Court on patent revocation on the grounds of unlawful usurpation (decision of February 22, 2011 – Case X ZB 43/08 – Schweißheizung/Welding Heater)**

Reported by Stefan Bianchin

---

A patent can be revoked on the ground of unlawful usurpation, i.e. “theft” of the invention from the inventor, according to Section 21 (1) No 3 PatG (German Patent Act) independent of the question of patentability of the subject-matter of the patent-in-suit.

In the decided case, the patent-in-suit, which related to a welding heater for the production of plastic tube mats, was attacked with an opposition. The opponents based their opposition only on the ground of unlawful usurpation, i.e. “theft” of the invention from the inventor, according to Section 21 (1) No 3 PatG. The German Federal Patent Court revoked the patent-in-suit in first instance as requested, wherein it did not evaluate whether the subject-matter of the patent-in-suit was patentable. In this respect, the German Federal Patent Court stated that the ground of unlawful usurpation is independent from the question whether the subject-matter of the patent-in-suit is patentable or not.

The patent owner appealed this decision and argued that, according to the established case law of the German Federal Supreme Court, only a subject-matter can be unlawfully acquired which fulfils the requirements of patentability

and that the German Federal Patent Court should have evaluated this question (e.g. German Federal Supreme Court, decision of July 24, 2007 – Case X ZB 17/05 – Angussvorrichtung für Spritzgießwerkzeuge/Runner Arrangement for Injection Molding Tools).

The German Federal Supreme Court did not follow this argumentation and stated – by waiving the former established case law – that a patent can be revoked on the ground of unlawful usurpation according to Section 21 (1) No 3 PatG, independent of the question of patentability of the subject-matter of the patent-in-suit. In this respect, the Court explained that with an opposition based on the ground of unlawful usurpation, the wrong assignment of the patent application, respectively the later granted patent is concerned. An inventor who disclosed a technical teaching shall acquire a right to the invention, independent of the question of patentability of the technical teaching (cf. Federal Supreme Court, decision of May 18, 2010 – Case X ZR 79/07 – Steuervorrichtung/Control Device). Compared to this, it was not justified to assume that only a patentable subject-matter can be unlawfully acquired.



Stefan Bianchin

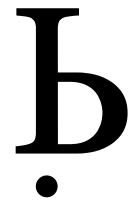
---

**Remarks**

---

With the present decision, the German Federal Supreme Court follows the prevailing view in the literature which pointed out that the former understanding of unlawful usurpation

according to Section 21 (1) No 3 PatG led to the unsatisfactory result that the opposition or the nullity complaint had to be rejected, i.e. the patent-in-suit staid in force, if its subject-



matter was not patentable and was not (also) attacked for lack of patentability. This had led to the practical consequence that an opponent, respectively a nullity plaintiff, who felt that its invention was stolen by the applicant of the patent-in-suit, could not limit its attack to this reason, if the risk of failure of the complaint had to be avoided. On the other hand, adding lack of patentability to the unlawful usurpation attack

put the true inventor in the unpleasant position that i) he had to discredit his own invention, and ii) he discredited his own unlawful usurpation attack. The present decision now allows an inventor to save any argument on patentability for other occasions, and to focus the nullity attack on the reason which triggered it, namely the “theft” of his invention.

---

**2. German Federal Supreme Court on inventiveness according to the “problem” in the description and objection of clarity in German nullity proceedings (decision of March 1, 2011 – Case X ZR 72/08 – Kosmetisches Sonnenschutzmittel III/Cosmetic Sun Screen III)**  
Reported by Joachim Mader

---

**As a starting point for the evaluation of inventive step one may not exclusively consider the “problem” to be solved according to the description of the patent-in-suit, but one should also consider whether a (different) problem belonging to the field of activity of the skilled person would have rendered the solution obvious.**

**A patent claim, which was limited in a European limitation procedure before the European Patent Office in accordance with Article 105 (a), 105 (b) EPC may not be examined in view of clarity (Article 84 EPC) in German nullity proceedings, since lack of clarity is no ground for nullification.**

In the decided case, the patent-in-suit was directed to a particular sun screen composition providing protection against UV-A and UV-B radiation. The patent proprietor had initiated a patent limitation procedure according to Article 105 (a) EPC before the European Patent Office during the course of a German nullity procedure against the patent-in-suit. The limited claims deriving from the limitation procedure of the EPO formed the basis for the German nullity procedure. The Federal Supreme Court clarified that these claims may not be objected to in

a German nullity procedure for lack of clarity. Lack of clarity is no ground of nullification for granted patents and the same rules applied likewise for patents limited in a European limitation procedure.

Regarding the problem underlying the alleged invention, the description of the patent-in-suit did not explicitly mention such a technical problem to be solved by the claimed invention.

The Federal Supreme Court therefore determined the problem based on the results actually achieved by the patent-in-suit in view of the prior art. The Court stressed that even if the technical problem was formulated correctly in the description, this problem was not necessarily the (only) starting point for the evaluation of inventive step. Rather, it should be considered, whether the solution of a different technical problem, which belonged to the same field of activity of the skilled person, would render the solution thereof obvious. This was decisive in the present case. The advantages mentioned in the prior art for a certain additive of a sun screen composition lead the skilled person in an obvious manner to the sun screen composition as claimed. The fact that the additive offered further advantages which were not mentioned in the prior art was no longer of relevance.



Joachim Mader

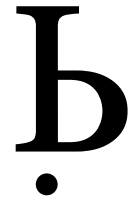
---

## Remarks

---

In accordance with the former jurisdiction of the Federal Supreme Court (“Hochdruck-

reiniger”, X ZR 200/99), the present decision stresses again that the problem to be solved as



mentioned in the description of a contested patent cannot form the only starting point for the evaluation of inventive step. If this would be the case, it would become difficult to successfully attack patents wherein the problem is not formulated correctly, or, where a “pseudo problem” is formulated, since the prior art in this case most likely cannot contain any hints for the solving of such a problem. One rather has to consider which problem was to be solved objectively, whether this objective problem is solved by the subject-matter of the independent claims, and finally, whether the claimed solution is obvious in view of the prior art. Not formulating any (meaningful) problem in a patent obviously increases the risk of a court finding and formulating a problem which the invention solves in a non-inventive manner. Therefore, applicants are generally well-advised to invest some thoughts in the formulation of the problem to

be solved, even if this may increase the risk of unveiling weaknesses of the invention early on.

The observations of the Federal Supreme Court with regard to the clarity objection raised by the nullity plaintiff in the present case set out at the nature of the relatively novel European limitation procedure according to Article 105 (a) EPC, which offers to a patent proprietor the possibility to limit the claims of a granted European patent with retroactive effect in all countries for which the European patent was validated. Since the limitations requested by a patent proprietor are examined by a competent Examining Division of the European Patent Office with regard to clarity and undue broadening, similarly to the regular examination procedure of a patent application, the effect of a cut-off of lack of clarity objections applies in the same manner as with the (initial) grant of the patent.

---

**3. German Federal Supreme Court on the standing to sue of a patentee having granted a royalty-free exclusive license (decision of April 5, 2011 – Case X ZR 86/10 – Cinch Stecker/Cinch Plug)**

Reported by Jörg Wahl

---

**The owner of a patent who granted a royalty-free exclusive license to a third party nonetheless has standing to sue for damages if the owner of the patent has economic advantages connected to the use of the exclusive license.**

In the present case, a patentee having granted a royalty-free exclusive license under the patent-in-suit to a third party (“licensee”) sued the defendants for patent infringement claiming amongst others damages. The patentee is the sole shareholder of the licensee.

The Federal Supreme Court held that, also in this constellation, the patentee was entitled to sue not only for injunctive relief but also for establishing the defendants’ obligation to pay damages. The likelihood of own damages suffered by the patentee due to infringing acts – one of the requirements for such a declaratory decision on damages under German law – had to be affirmed if the patentee enjoyed continuous economic advantages from the use of the exclusive license.

According to the Federal Supreme Court, this was not only the case if the licensee was obliged to pay a royalty or to purchase products from the patentee (tie-in of supply) but also if – more generally – the patentee indirectly achieved continuous economic advantages. The latter was the case, here, because the licensee was a wholly owned subsidiary of the patentee who thus participated in the licensee’s profits made with the licensed patent rights. The fact that this economic advantage was not based on the license agreement but rather on corporate law (or generally on any other legal basis) was generally irrelevant as long as there was a sufficiently strong causal link between the infringing acts and the damage suffered by the patentee. Such link existed between the parent company and its wholly owned subsidiary.

It should be noted that in the decided constellation, however, the patentee cannot request the defendants to pay compensation to itself but only to the licensee.



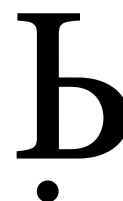
---

**Remarks**

---

The present decision is in line with the case law of the Federal Supreme Court. It was acknowledged before that a patentee had standing to sue for damages if he had exclusively licensed his patent and received royalty payments in return, because in this case the patent infringement directly lead to a loss of (royalty) income.

However, it was not clear whether it was sufficient to be only indirectly affected by the patent infringement. The present decision answers this question in general in the positive by stating that a patentee generally has standing to sue if he continuously participates in the use of the exclusive license by the licensee. More specifically,



in the decided case, the standing to sue of the patentee was assumed because he wholly owned the exclusive licensee. Formally, this leaves the question unanswered whether a co-ownership of the licensee would have been sufficient as well. The reasoning and rationale of the decision, according to which the standing to sue requires the

likelihood of own damage based on a continuous participation in the use of the license, suggests this. This enlarges the scope of potential plaintiffs in patent litigation, particularly in an international group of companies, where different entities may face different procedural and other legal hurdles in suing a patent infringer.

---

**4. German Federal Supreme Court: Nullity action lodged during pending opposition proceedings inadmissible even if based only on national prior right (decision of April 19, 2011 – Case X ZR 124/10 – Mautberechnung / Toll Calculation)**

Reported by Bastian Best

---

**According to Section 81 (2) German Patent Act, a nullity action is inadmissible as long as parallel opposition proceedings are pending (“Principle of Subsidiarity”). This also applies if the nullity action is based only on a national prior right pursuant to Article 139 (2) EPC – which cannot be considered in parallel European opposition proceedings.**

The case to be decided in “toll calculation” related to European patent 824 731, which concerns a method and apparatus for determining a tax for a vehicle using a positioning system. The patent was revoked during European opposition proceedings, whereupon the patentee filed an appeal against the decision to revoke the patent. While the European opposition appeal proceedings were still pending, a national German nullity action was lodged.

The nullity action was based on the grounds of lack of novelty in view of the German patent application 44 27 392, which was filed before the priority date of the attacked patent, but published only thereafter. As a result, this document – being post-published with respect to the attacked patent – constituted prior art relevant for novelty in the German nullity action (Section 3 [2] German Patent Act). However, it could not be considered in the European opposition proceedings, since Article 54 (3) EPC does not apply to post-published German patent applications.

The German Federal Patent Court rejected the nullity action for being inadmissible pursuant to Section 81 (2) German Patent Act. Accordingly, a nullity action cannot be lodged as long

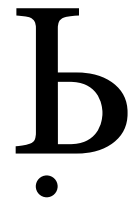
as an opposition can be filed or opposition proceedings are pending (“Principle of Subsidiarity”). The Court thereby confirmed its earlier decision “radiation control” (decision of July 12, 2005 – Case X ZR 29/05 – Strahlungssteuerung), which concerned a German nullity action and a European opposition based on the same grounds. According to the Court, the principle of precedence of the opposition over the nullity procedure applied also to the present case, where the nullity action was based on a national prior right that can be considered in the national nullity procedure only.

This decision was confirmed in second instance by the German Federal Supreme Court. Accordingly, a German nullity action lodged during ongoing European opposition proceedings is inadmissible, even if the nullity action is based only on a national prior right that cannot be considered during the European opposition proceedings.

The Federal Supreme Court also acknowledged that the above decision might give rise to a gap in legal protection, namely if a European patent undergoing a European opposition is asserted in a national infringement suit. In this constellation, the party accused of patent infringement has a legitimate interest in not being held liable, although the asserted patent is invalid in view of a national prior right that cannot be considered in the European opposition. Since a full-blown European opposition procedure (including the appeal instance) might well last several years, this would result in a long period of legal uncertainty about the validity of the asserted patent, namely until the party accused of patent infringement is eventually able to use the



Bastian Best



potentially invalidating national prior right in a national nullity action (which is admissible only after the European opposition has been decided).

Therefore, the German Federal Supreme Court also ruled in “toll calculation” that the national infringement court must consider the option to

stay the infringement proceedings in view of an ongoing opposition procedure, even if it is likely that the opposition will not be successful, but if a subsequent nullity complaint has sufficient likelihood of success based on a document that can only be considered in the latter procedure.

---

### Remarks

---

In essence, the decision “toll calculation” of the German Federal Supreme Court follows the Court’s earlier decision “radiation control”, wherein a German nullity action is inadmissible as long as a parallel (German or European) opposition procedure is pending. “Toll calculation” establishes this principle of precedence of the opposition over the nullity procedure also for cases where the nullity action is based on a national prior right that can only be used in the nullity procedure, but cannot be considered in the opposition.

In order to prevent a party from being held liable for infringement of a patent that will likely survive the opposition, but might well be invalidated in a subsequent nullity procedure due to such a national prior right, the decision “toll calculation” rules that in such a constellation the infringement procedure should be stayed.

This means, the German Federal Supreme Court applied a more formal point of view on the admissibility of a nullity complaint, but also provided the solution to the potential problems arising from this decision.

---

**5. European Patent Office: Notorious prior art and the necessity of an additional search by the Examining Division (decisions of June 6, 2011 – Case T 1411/08 – and May 12, 2011 – Case T 2127/09)**

Reported by Dr. Stefan V. Steinbrener

---

**In its decision T 1515/07 “Cost estimate/SAP”, Board 3.5.01 conceded that an Examining Division had discretion as to whether or not an additional search was necessary for a claimed mixture of technical and non-technical features when a search had not been carried out by the Search Division under Rule 63 (1) EPC (“no meaningful search possible”). However, this discretion was limited to the special cases of notoriously known features or those explicitly accepted by the applicant as known. As long as no search had been performed, an Examining Division should normally not refuse an application for lack of inventive step if the invention as claimed contained at least one technical feature which was not notorious. The Board explicitly warned against an approach of finding a search not necessary because a decision could be reached anyway. This case law has now independently been confirmed by two different Boards.**

In case T 1411/08, the application had originally been filed as an international application for which the EPO acted as International Searching Authority and the USPTO as International Preliminary Examining Authority. Whereas the EPO found that no search was to be performed because the claims related, essentially, to a method of doing business, the International Preliminary Examination Report by the USPTO cited a document D1.

In the European phase, the Examining Division initially substantiated a lack of inventive step by reference to D1. However, later-on, in particular during oral proceedings arranged before the

Division, the discussion of inventive step did not make reference to D1 or any other document. During these proceedings, the applicant filed an amended set of claims according to its sole request, claim 1, relating to an online method of pairing providers with consumers.

At the end of the oral proceedings, the Examining Division refused the application on the ground that the claimed subject-matter lacked inventive step. No document was cited as evidence, but the decision identified the following differences over the prior art, i.e.

- (i) that the domain name was parsed;
- (ii) that a central database containing information about the consumer was provided; and
- (iii) that there was an update of the information about the consumer based upon the transaction.

Differences (i) and (iii) were said to result from a technically straightforward implementation of a business idea.

Of difference (ii), it was said to be well-known that websites stored information about a user's behaviour, and to do this using a central database was just one of two well-known alternatives, the other alternative being to store the information in a cookie. The Division's argument thus relied on an understanding of the prior art. For the argument to work, it had to be the case that the claimed invention actually did differ in the three points identified, and it had also to be the case that there were websites which tracked the behaviour of users.

Referring to decision T 1242/04 “Provision of product-specific data/MAN”, the Board held that when a Search Division had found that no



Stefan V. Steinbrener



search was to be performed, it was not always necessary for the Examining Division to carry out an “additional search” before raising an inventive step objection. That should be allowable where the objection was based on “notorious knowledge” or indisputably formed part of the common general knowledge. Such cases were, however, exceptional, and a search was otherwise essential.

Under the term “notorious” the Board understood, firstly prior art which was so well-known that its existence at the date of priority could not be reasonably disputed. This was to be distinguished from the skilled person's common general knowledge, which was something that generally could be reasonably questioned. Further to that, the Board understood “notorious” as implying that technical detail was not significant. The examination of a combination of features in relation to inventive step normally involved questions such as what advantages and disadvantages the combination was said to have, and in what technical areas it was used. This was the sort of information a search should uncover. On the other hand, a claim might be drafted in such a way that said questions did not arise. It was prior art reflecting such generic features that the Board understood as “notorious”. Thus, a “computer for sending a message” was notorious, whereas a “32-bit computer for sending a message” would not be notorious if, for example, questions of advantages and disadvantages of 32-bit computers arose.

In the present case, the Examining Division had not identified the prior art as “notorious” or an undisputed part of the skilled person's common general knowledge. In the Board's understanding of those terms, neither the normal http request-response sequence, nor the websites which stored information about a user's behaviour fell within their meaning. The issue of what constituted the normal http request-response sequence at the priority date was certainly open to question, and it was certainly something

towards which a search could be directed. The same went for websites storing information on user behaviour. The Board, therefore, concluded that the Examining Division could and should have ensured that a search was performed before refusing the application for lack of inventive step.

In addition, the Board considered the failure to carry out an additional search to constitute a substantial procedural violation and ordered the reimbursement of the appeal fee since the impugned decision was founded on prior art which neither the appellant nor the Board could reasonably assess. In the present case, the additional search was manifestly necessary as the invention claimed contained technical features which could not be regarded as notorious.

The necessity of an additional search under these circumstances was confirmed by Board 3.2.04 in case T 2127/09 relating to a game apparatus and a method of controlling such apparatus. The Search Division considered that the claimed subject matter was merely an obvious implementation of game rules on known hardware and did not carry out a search in accordance with Rule 45 EPC 1973. This view was confirmed by the Examining Division refusing the application because of lack of inventive step over the notoriously well-known “Tetris” computer game.

On appeal, the Board found that compared with the standard “Tetris” game in which objects were cleared when a first condition was satisfied, the different features of claim 1 having both technical and non-technical aspects included a second condition which had to be satisfied before the objects were cleared and disappeared. The non-technical aspects reflected modified “Tetris” game rules and the technical aspects reflected the technical implementation of those modified rules. Since the Search Division had not carried out a search under Rule 45 EPC 1973, the Board was unable to finally assess whether

the claimed subject matter which had been substantially amended in appeal proceedings involved an inventive step, and in particular whether the amended features provided any further technical effects associated with the implementation of the modified “Tetris” game rules over those inherent in these rules themselves.

In cases in which the Search Division did not carry out a search under Rule 45 EPC 1973

and features were claimed which were neither notoriously known nor explicitly accepted by the applicant as known, it was established case law that an additional search had to be carried out by the Examining Division. Since the amendments of the claims met these requirements, an additional search was necessary. The decision under appeal was therefore set aside and the case was remitted to the department of first instance.

---

## Remarks

---

As the prior art established by the Search Division in the European Search Report is fundamental for any subsequent proceedings before the EPO, the advice given to search examiners in the current version of Guidelines B-VIII, 3 regarding the interpretation of Rule 63(1) EPC, namely that

“it may be the case that a given claim could, theoretically, be searched completely, but that nevertheless, the Search Division comes to the conclusion ... that it would not be meaningful to do so, in the sense that it would not serve any useful purpose to do so having regard, for example, to any possible future prosecution of the application. In other cases, it may be that the results of the search themselves would be quite meaningless”.

is doubtful and does not appear to be in line with the established jurisprudence clearly relying on

the impossibility of a meaningful search and not on considerations of its necessity or usefulness. Such advice may eventually be responsible for the embarrassing situation that procedural violations occur since the entire assessment of patentability is flawed when the Examining Division (now normally identical with the Search Division) is encouraged to persist with the same approach. Moreover, a possible gain in procedural efficiency at the initial search stage will be overcompensated by important losses in overall efficiency due to imminent remittals.

In any case, irrespective of whether a search has (erroneously) not been performed by the Search Division under Rule 63(1) EPC, it now appears to be well established that an additional search is obligatory in examining proceedings if claimed features are not “notorious” within the more restricted meaning of the term given in T 1411/08.

---

**6. European Patent Office: Refund of examination fee after withdrawal of application – legal Board of Appeal disapproves restrictive Office practice (decision of July 21, 2011 – Case J 25/10 – Catheters having linear electrode arrays/Medtronic VASCULAR)**  
Reported by Dr. Rudolf Teschemacher

---

The Legal Board of Appeal confirms the applicant's right to get a refund of the examination fee until substantive examination has been actually taken up.

Article 11 of the Rules relating to Fees (RFees) provides in two alternatives for the possibility of a refund of the examination fee. Pursuant to lit a), the fee shall be refunded in full if the application is withdrawn, refused or deemed to be withdrawn before the Examining Division has resumed responsibility, and pursuant to lit b), it shall be refunded at a rate of 75% if one of these events happens after the Examining Division has resumed responsibility but before substantive examination has begun. In the reported case, the Euro-PCT application entered the regional phase in July 2009. Still in the same month, the Receiving Section issued the communication pursuant to Rule 161 EPC informing the applicant of the opportunity to amend the application. Eight months later, before any action of the Examining Division, the applicant withdrew the application. His request for a partial refund of the examination fee was refused on the grounds that the Examining Division had resumed responsibility for the examination of the application and that the primary examiner had confirmed that he already had started substantive examination.

The Legal Board of Appeal does not accept this reasoning. The Board states that the written opinion issued by the EPO as International

Searching Authority in the international phase cannot be considered as an act of substantive examination in the regional phase. The confirmation of the primary examiner that he had already started with a substantive examination was a mere assertion. However, the mere assertion that the condition for refusing the refund was met without reference to any relevant facts amounted to an arbitrary decision which was not verifiable and went against all legal certainty. The correctness of such a decision could not be determined, neither by the applicant nor by the Board of Appeal. Thus, the Board orders the partial refund of the examination fee and, as a result of an insufficient reasoning of the contested decision, also the reimbursement of the appeal fee.

As a side remark, the Board also points to the Notice from the EPO on the refund of the examination fee published in OJ EPO 2009, 542 and applicable only to later cases. In this notice, the EPO states that in case of a Euro-PCT application for which an International Search Report has been drawn up by the EPO the examination fee is refunded if the application is withdrawn within the time limit laid down in Rule 161 (1) EPC. The Board notes that it is still Article 11 RFees which is applicable and therefore a 75% refund of the fee can still only be denied if substantive examination has already begun. As already made clear, this requires a concrete act of the Examining Division with regard to substantive examination.



Rudolf Teschemacher

---

**Remarks**

---

The reported case shows that after the full implementation of BEST (Bringing Examination and Search Together) and the entering into force of the respective provisions of the EPC 2000, there is still no clear concept in the EPO when the search stage ends and when the examination stage begins. The BEST project was not intended to merge search and examination but to allow that search and examination is performed by the same staff. Consequently, the two stages are still separated by the requirement of an examination request. As to the competence of the respective departments of the EPO, Rule 10 EPC stipulates that the Receiving Section remains responsible for the examination on filing and, as to formal requirements, until the Examining Division becomes responsible under Article 94 (1) EPC, in other words until a valid request for examination has been filed and, if necessary, confirmed.

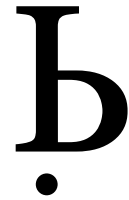
In the present case, a valid request for examination was filed at entry into the regional phase. Since there was an international search report established by the EPO, there was no need for a supplementary search report. Thus, a confirmation of the request for examination under Rule 70 (2) EPC was not necessary. Therefore, the statement in the decision refusing the request for refund that the Examining Division had already resumed responsibility is correct. Nevertheless, it was the Receiving Section which issued the communication under Rule 161 (1) EPC, although it had already lost its responsibility in accordance with Rule 10 EPC.

The shifting of the responsibility to the Examining Division was not sufficient to refuse the request for refund since the second condition in Article 11 lit b) RFees was not met because the EPO did not establish by verifiable facts that examination had already begun. The Notice on

the refund of the examination fee to which the Legal Board of Appeal refers seems to be based on the idea that the EPO can determine the start of examination by a fixed point in time during the proceedings. However, this is not what the law requires.

Even if the EPO had wished to indicate concrete acts of the examiner by which examination had started, it seems difficult to imagine on which acts the Examining Division could have relied. In the present case, the applicant submitted amended claims when entering the regional phase by deleting all claims which had been excluded as surgical methods from search and by making only some editorial amendments to the remaining claims. Therefore, the examiner could have taken the substance of the search opinion more or less unchanged as a basis for a first examination report. No further acts were necessary to take up examination. If the examiner had proceeded this way before the request for refund was received, it may be assumed that he would have received the report.

For economic reasons, it is understandable that the EPO tries to retain the examination fee as far as possible after it has established an opinion accompanying the search report in the international phase, in the regional phase or for a direct European patent application. This is, however, not a criterion under Article 11 RFees stipulating the criteria for a refund. Therefore, Article 11 RFees would have to be changed in order to achieve the result desired by the EPO. The EPO may hesitate to propose such an amendment, because the relation between search fee and examination fee was changed when the extended European search report was introduced, with the effect that the search fee was increased by almost 40%. In addition, it may be regarded as unfair if the applicant,



having to wait longer for the examination to be taken up in times of increasing backlogs, is deprived of getting back the fee for examination if he loses his interest during the period in which the EPO remains inactive.

It goes without saying that the reasoning of *J 25/10* applies in the same way to Euro-PCT applications without an International Search Report as well as to direct European applications. The Notice on the refund of the examination fee is no longer applicable to all these situations as far as it sets fixed dates or time limits for the withdrawal, fiction of withdrawal,

or refusal or the application as a prerequisite for a refund of the examination fee under Article 11 lit b) RFees.

As a result of the procedural changes implemented in the framework of the EPO's "Raising the Bar" initiative, there may be other important cases in which it may be argued that there is a mix of search and examination which is inadmissible for legal reasons. A challenge of the applicant's obligation under Rule 70a (2) EPC to give a substantive reply to the search opinion before the request for examination has become valid might be an even more serious test.

---

**7. European Patent Office: Enlarged Board of Appeal renders decision on disclaimers for disclosed embodiments (decision of August 30, 2011 – Case G 2/10 – Disclaimer/The Scripps Research Institute)**

Reported by Dr. Rudolf Teschemacher

---

**The Enlarged Board of Appeal answers the questions referred to it as follows:**

**1a. An amendment to a claim by the introduction of a disclaimer disclaiming from it subject-matter disclosed in the application as filed infringes Article 123 (2) EPC if the subject-matter remaining in the claim after the introduction of the disclaimer is not, be it explicitly or implicitly, directly and unambiguously disclosed to the skilled person using common general knowledge, in the application as filed.**

**1b. Determining whether or not that is the case requires a technical assessment of the overall technical circumstances of the individual case under consideration, taking into account the nature and extent of the disclosure in the application as filed, the nature and extent of the disclaimed subject-matter and its relationship with the subject-matter remaining in the claim after amendment.**

The invention underlying the referring decision T 1068/07 (OJ EPO 2011, 256) concerns certain DNA molecules. Each of the claims at issue contains a disclaimer excluding molecules by a functional feature defining a property of the molecules. According to the referring Board, the claims with the disclaimer are directed to embodiments the subject-matter of which was disclosed in the original application.

In the case law of the Boards of Appeal, an amendment disclaiming originally disclosed subject-matter in a claim drafted in more

general terms was considered allowable in one of the earliest decisions (T 4/80, OJ EPO 1982, 149). This remained uncontested until decision 1102/00 of June 1, 2004 and several further decisions concluded from the decisions of the Enlarged Board of Appeal (EBA) in cases G1/03 and G 2/03 that a disclaimer is only allowable if it could be inferred from the disclosure of the application as filed that the applicant intended to exclude such subject-matter from the scope of protection it was seeking. However, some years later different conclusions were reached in decisions T 1139/00 of February 2, 2005 and in particular in T 1107/06 of December 2, 2008, expressly disagreeing with the reasoning of T 1102/00. This divergence in case law prompted Technical Board of Appeal 3.3.04 to refer the point of law to the EBA in decision T 1068/07. The question was answered with the above order.

At the outset, the EBA dismisses the approach taken in the case law following T 1102/00, assuming that the question has been dealt with in G 1/03 and that this decision contains the criteria applicable to assessing the allowability of disclaimers for undisclosed as well as for disclosed subject-matter. The EBA concludes that G 1/03 only deals with the admissibility of disclaimers for undisclosed subject-matter and does not give an exhaustive definition of the situations in which a disclaimer is admissible. Decisions of courts in England and the Netherlands are cited which have taken the same stance. On the other hand, the EBA does not agree with the approach that the allowability of an amendment disclaiming a more specific embodiment from a general teaching can be decided following rules of logic in the sense that

the disclosure of the general teaching and the disclosure of the specific embodiment would, by implication, inevitably also disclose all embodiments within the ambit of the general teaching which are not disclaimed.

The EBA notes that, even if it may be said that there is not normally a problem with the original disclosure for the remaining subject-matter when originally disclosed specific embodiments, groups thereof or areas are disclaimed from the scope of a more general claim reflecting a

more general teaching which has equally been disclosed, the question can nevertheless not be decided schematically. Instead, an assessment of the overall technical circumstances of the individual case under consideration is required and the test to be applied is whether the skilled person, using common general knowledge, would regard the remaining claimed subject-matter as explicitly or implicitly, but directly and unambiguously, disclosed in the application as filed.

---

## Remarks

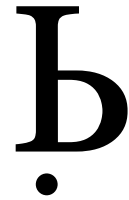
---

Whereas it may not be surprising that the test for assessing the question of added subject matter in case of the introduction of a disclaimer for a disclosed embodiment is not different from the usual disclosure test under Article 123 (2) EPC, it may be not easy to derive at first glance from these general considerations the situations in which problems may arise. The EBA, stating that the general criteria applicable to the introduction of a limitation defined in positive terms also apply to the introduction of a disclaimer, mentions the case law regarding intermediate generalisations and singling out. However, this case law is concerned with the situation that a feature disclosed in connection with a specific embodiment is used for defining the invention in broader terms. In contrast, a disclaimer excludes a specific embodiment as a whole, typically not modifying the disclosure for the broader technical teaching.

Nevertheless, the EBA mentions the possibility that the insertion of a disclaimer into a claim may result in singling out a hitherto not mentioned or at least not specifically disclosed individual compound or group of compounds, or would lead to a particular meaning of the

remaining claimed subject-matter which was not originally disclosed. This may be seen in connection with the EBA's definition of a disclaimer which may not only exclude specific embodiments but also groups of embodiments defined in generic terms, and indeed the EBA emphasizes that the main problem of the compatibility of disclosed disclaimers with Article 123 (2) EPC arises in those cases in which a whole area or subclass is disclaimed. This may lead to situations in which the excluded subgroup is larger than the remaining group and the remaining subject-matter may even be a single embodiment. Thus, an assessment of the overall technical circumstances of the individual case is required, taking into account the nature and extent of the disclosure in the application as filed, the nature and extent of the disclaimed subject-matter and its relationship with the subject-matter remaining in the claim after the amendment.

In any case, the EBA's statement, referring to G 1/03, that the exclusion of one of several disclosed specific embodiments from an invention disclosed in general terms will normally not modify the remaining general teaching, will be



helpful for the applicant or patentee trying to introduce a disclaimer for a disclosed embodiment. The EBA expressly acknowledges certain situations in which a disclaimer may be legitimate, stating that the applicant may be interested in obtaining a first quicker protection for a preferred embodiment and pursue the general teaching in a divisional application. The EBA also addresses the question whether or not and, if so, under what circumstances, in such a case a

disclaimer would be necessary in order to avoid the so-called prohibition on double protection, but does not go into any further details in this respect. These remarks offer a solution to the problem of double patenting which was seen in decision T 307/03 (OJ 2009, 422), diverging from consistent EPO practice and so far not followed by other Boards of Appeal, disagreed in T 1423/07 of April 19, 2010, if it should turn out that there is such a problem.

---

**8. Court of Justice of the European Union: Liability of purchasers of “keywords” for trademark infringement – “Double identity” infringement and infringement of “reputation” marks (decision of September 22, 2011 – Case 323/09 – Interflora v Marks & Spencer – Interflora)**

Reported by Dr. Alexander von Mühlendahl, J.D., LL.M.

---

**Interflora is proprietor of UK and Community trademarks “Interflora” which are used world-wide on a franchise basis for flower shops and flower delivery services. Marks & Spencer, a large UK retailer also selling and delivering flowers, purchased from Google the “Interflora” mark as a keyword in Google’s AdWord program. This led to the display of “sponsored links” (advertisements) leading to Marks & Spencer flower delivery services. Interflora brought a trademark infringement suit against Marks & Spencer, claiming infringement under the “double identity” rule and on the basis of reputation.**

The High Court for England and Wales referred a series of questions to the ECJ, which were subsequently restricted after the L’Oréal judgment of the ECJ:

1. Where a trader which is a competitor of the proprietor of a registered trademark and which sells goods and provides services identical to those covered by the trademark via its website:
  - selects a sign which is identical (...) with the trademark as a keyword for a search engine operator’s sponsored link service,
  - nominates the sign as a keyword,
  - associates the sign with the URL of its website,
  - sets the cost per click that it will pay in relation to that keyword,
  - schedules the timing of the display of the sponsored link and
  - uses the sign in business correspondence relating to the invoicing and payment of fees or the management of its account with the search engine operator, but the sponsored link does not itself include the sign or any similar sign,

do any or all of these acts constitute “use” of the sign by the competitor within the meaning of Article 5 (1) lit a of [Directive 89/104] and Article 9 (1) lit a of [Regulation No 40/94]?

2. Is any such use “in relation to” goods and services identical to those for which the trademark is registered within the meaning of Article 5 (1) lit a of [Directive 89/104] and Article 9 (1) lit a of [Regulation No 40/94]?

3. Does any such use fall within the scope of either or both of:

- (a) Article 5 (1) lit a of [Directive 89/104] and Article 9 1 lit a of [Regulation No 40/94]; and
- (b) Article 5 (2) of [Directive 89/104] and Article 9 (1) lit c of [Regulation No 40/94]?

4. Does it make any difference to the answer to question 3 above if:

- (a) the presentation of the competitor’s sponsored link in response to a search by a user by means of the sign in question is liable to lead some members of the public to believe that the competitor is a member of the trademark proprietor’s commercial network contrary to the fact; or
- (b) the search engine operator does not permit trademark proprietors in the relevant Member State (...) to block the selection of signs identical to their trademarks as keywords by other parties?’

Among the submissions made to the ECJ in the case, the submission of the European Commission is of particular interest: The Commission invited the Court to revise its case law and limit



Alexander von Mühlendahl

protection in “double identity” cases to the detriment to of the origin function exclusively. The Court rejected this invitation and confirmed its previous case law, notably the judgment in the L’Oréal/Bellure (Case C-487/07).

The answers given by the ECJ were as follows:

1. Article 5 (1) lit a of First Council Directive 89/104/EEC of December 21, 1988 to approximate the laws of the Member States relating to trademarks and Article 9 (1) lit a of Council Regulation (EC) No 40/94 of December 20, 1993 on the Community trademark must be interpreted as meaning that the proprietor of a trademark is entitled to prevent a competitor from advertising – on the basis of a keyword which is identical with the trademark and which has been selected in an internet referencing service by the competitor without the proprietor’s consent – goods or services identical with those for which that mark is registered, where that use is liable to have an adverse effect on one of the functions of the trademark. Such use:

- adversely affects the trademark’s function of indicating origin where the advertising displayed on the basis of that keyword does not enable reasonably well-informed and reasonably observant internet users, or enables them only with difficulty, to ascertain whether the goods or services concerned by the advertisement originate from the proprietor of the trademark or an undertaking economically linked to that proprietor or, on the contrary, originate from a third party;
- does not adversely affect, in the context of an internet referencing service having the

characteristics of the service at issue in the main proceedings, the trademark’s advertising function; and

- adversely affects the trademark’s investment function if it substantially interferes with the proprietor’s use of its trademark to acquire or preserve a reputation capable of attracting consumers and retaining their loyalty.

2. Article 5 (2) of Directive 89/104 and Article 9 (1) lit c of Regulation No 40/94 must be interpreted as meaning that the proprietor of a trademark with a reputation is entitled to prevent a competitor from advertising on the basis of a keyword corresponding to that trademark, which the competitor has, without the proprietor’s consent, selected in an internet referencing service, where the competitor thereby takes unfair advantage of the distinctive character or repute of the trademark (free-riding) or where the advertising is detrimental to that distinctive character (dilution) or to that repute (tarnishment). Advertising on the basis of such a keyword is detrimental to the distinctive character of a trademark with a reputation (dilution) if, for example, it contributes to turning that trademark into a generic term. By contrast, the proprietor of a trademark with a reputation is not entitled to prevent, *inter alia*, advertisements displayed by competitors on the basis of keywords corresponding to that trademark, which put forward – without offering a mere imitation of the goods or services of the proprietor of that trademark, without causing dilution or tarnishment and without, moreover, adversely affecting the functions of the trademark with a reputation – an alternative to the goods or services of the proprietor of that mark.

---

## Remarks

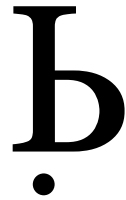
---

The judgment in the Interflora case is the last, and for the time being final, in a series of cases

where the ECJ has been asked to interpret the Trademarks Directive and the Community

Trademark Regulation, the E-Commerce Directive and the Enforcement Directive in situations where trademarks are used on or via the Internet. These cases have become known by their names as follows: Google France, BergSpechte, Eis.de, Portakabin, L'Oréal v eBay, and Interflora, of which Google France, L'Oréal/eBay and Interflora can be described as the "leading cases". We now have a reasonably stable situation which can be summarized as follows:

1. Internet referencing services such as Google and other search engines are not liable for trademark infringement when selling trademarks, however famous they may be, as keywords leading to the display of sponsored links (advertisements), the reason being that they do not "use" the trademarks (Cases C-236, 237, 238/08, Google France).
2. Purchasers of keywords which are themselves Internet service providers such as eBay and other auction platform also do not "use" the purchased trademarks (Case C-324/09, L'Oréal v eBay).
3. Purchasers of keywords offering goods or services via an Internet site are using the purchased trademarks for their own goods or services and are liable for trademark infringement when the use infringes the "origin function" of the mark, which is the case "where that advertisement does not enable an average Internet user, or enables that user only with difficulty, to ascertain whether the goods or services referred to therein originate from the proprietor of the trademark or an undertaking economically connected to it or, on the contrary, originate from a third party" (Google France, L'Oréal v eBay, Interflora).
4. Purchasers of keywords do not infringe the "advertising function" trademarks (Google France, Interflora).
5. Purchasers of keywords may infringe the "investment function" when the use made "substantially interferes with the proprietor's use of its trademark to acquire or preserve a reputation capable of attracting consumers and retaining their loyalty" (Interflora).
6. Where the allegedly infringed mark is a mark with reputation, infringement may occur when the use may contribute to the mark becoming generic. It does not amount to infringement when the use is merely made to offer an alternative to the products of the trademark proprietor (Interflora).
7. Internet service providers may be qualified as a "host" within the meaning of the E-Commerce Directive and thus subject to liability limitation only if they do not play an active role of such a kind as to give it knowledge of, or control over, the data stored (Google France). If it has not played such a role, that service provider cannot be held liable for the data which it has stored at the request of an advertiser, unless, having obtained knowledge of the unlawful nature of those data or of that advertiser's activities, it failed to act expeditiously to remove or to disable access to the data concerned" (Google France).
8. An Internet service provider cannot rely on the exemption from liability provided for in the E-Commerce Directive for "hosts" if it was "aware of facts or circumstances on the basis of which a diligent economic operator should have realised that the offers for sale in question were unlawful and, in the event of it being so aware, failed to act expeditiously" (L'Oréal v eBay).
9. Parties enabling infringement of trademarks as Internet service providers may be liable in accordance with Article 11 of the Enforcement Directive. They must not only stop ongoing infringements but must also prevent "further infringements of that kind". Injunctive relief must be "effective, proportionate, and dissuasive and must not create barriers to legitimate trade" (L'Oréal v eBay).



10. As a consequence of these decisions, it will be for the national courts to take the – difficult – decisions left to them: whether there is confusion or likelihood, especially when keywords result in the display of advertisements which do not themselves contain the keyword; whether there is an interference with the investment function, whether there is “dilution” or “tarnishment” or “free riding”. As regards Article 11 of the Enforcement Directive, it remains unclear whether the obligation also applies to “hosts” within the E-Commerce Directive.

Still hazy is the situation as regards third-party liability in general, such as for contributory infringement, where Article 11 of the Enforcement Directive may apply. No answer is provided by the ECJ to the question (which has not been presented to it) of the relationship between trademark protection and unfair competition.

The bottom line: some stability, still much uncertainty.

---

**9. Munich Appeal Court confirms likelihood of confusion between L'Oréal's ACQUA DI GIO' and DI GIOIA (decisions of July 21, 2011 – Cases 29 U 1031/11 and 29 U 1420/11)**

Reported by Pascal Böhner

---

**In spring 2010 L'Oréal launched its new fragrance ACQUA DI GIOIA Europe-wide. M.G. Demand Holding A.G., based on its own 2002 registered trademark DI GIOIA, addressed a cease-and-desist letter to L'Oréal's distributors in Germany, requesting to immediately stop distribution and destroy all ACQUA DI GIOIA perfume flacons on stock. The company argued that ACQUA DI GIOIA was confusingly similar to DI GIOIA since the element ACQUA ("water") was devoid of any distinctive character and could therefore not prevent confusion between the two marks.**

Only seven days after this letter, L'Oréal obtained a preliminary injunction from the Munich District Court, prohibiting the adverse party to send further warning letters to retailers. Furthermore, L'Oréal obtained an additional injunction, prohibiting M.G. Demand Holding the use of its own trademark DI GIOIA. L'Oréal based its rights on the senior trademark ACQUA DI GIO' registered in 1996.

In the following main action the Munich District Court confirmed this position by decisions

issued in December 2010 and March 2011. Moreover, M.G. Demand Holding was ordered to consent to cancellation of its German trademark DI GIOIA before the German Patent and Trademark Office.

These decisions have now also been confirmed by the Munich Appeal Court who rejected M.G. Demand Holding's appeal on July 21, 2011 (29 U 1031/11 and 29 U 1420/11). The Munich Appeal Court upheld the first instance decisions and findings, according to which M.G. Demand Holding's DI GIOIA trademark of 2002 was confusingly similar to L'Oréal's earlier ACQUA DI GIO' mark.

Moreover, the Munich Appeal Court declined to grant leave to appeal to the Federal Supreme Court. However, the Appeal Court's decisions have not become final yet, since M.G. Demand Holding still has the possibility to file appeal against denial of leave to appeal before the Federal Supreme Court.

BARDEHLE PAGENBERG advises and represents L'Oréal since more than 30 years in the field of intellectual property.



Pascal Böhner

---

**10. General Court of the European Union: The greater the designer's freedom the less likely minor differences will produce a different overall impression (decisions of September 9, 2011 – Cases T-10/08 and T-11/08 – Kwang Yang Motor v Honda Giken)**

Reported by Dr. Henning Hartwig

---

**The Community design challenged in the present proceedings (the two parallel decisions in Cases T-10/08 and T-11/08 are basically identical in their reasoning) constituted an internal combustion engine which could be incorporated into a lawnmower. Therefore, the challenged design was to be treated as a component part of a complex product.**

The cases presented two separate issues, namely whether this component part, once incorporated into the complex product, remained visible during normal use of the latter (cf. Article 4 [2] CDR), and whether the challenged design was valid, i.e., had individual character in view of the asserted earlier design (Article 6 CDR).

As regards the first issue, the Court confirmed the Board of Appeal's assessment that the parts of the challenged design remaining visible during normal use of the complex product, once the engine was mounted on the lawnmower, were the upper side of the motor, the front and lateral sides, whereas the rear side was less visible and the underside not visible at all. Consequently, the upper side of the engine determined the overall impression produced by the engine, according to the Court.

As regards the second issue, in determining the overall impression that the challenged design produced on the informed user (cf. Article 6 [1] CDR), the Court confirmed that such a user was neither a manufacturer nor a seller of the products in which the designs at issue are intended to be incorporated or to which they are intended to be applied. Rather, an informed user was a person having some awareness of the existing designs in the sector concerned, without know-

ing which aspects of that product are dictated by technical function.

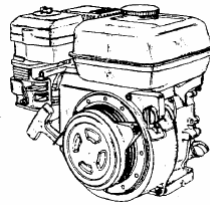
Turning to the designer's degree of freedom in developing the challenged design (to be taken into consideration in assessing its individual character; cf. Article 6 [2] CDR), the General Court confirmed that such a degree of freedom was established, *inter alia*, by the constraints (or the absence of such constraints) of the features imposed by the technical function of the product or an element thereof, or by statutory requirements applicable to the product. Furthermore, the Court held, for the first time, that "the greater the designer's freedom in developing the challenged design, the less likely it is that minor differences between the designs at issue will be sufficient to produce a different overall impression on an informed user. Conversely, the more the designer's freedom in developing the challenged design is restricted, the more likely minor differences between the designs at issue will be sufficient to produce a different overall impression on an informed user."

As regards the challenged design, the Court confirmed the Board of Appeal's view that the designers of internal combustion engines enjoyed a high degree of freedom in the development of designs relating to those internal combustion engines, including the challenged design. In particular, no limit was imposed as to the shape of the upper side of those engines and that the components of the engines concerned could be positioned differently without altering the functionality or the aesthetic considerations, given that internal combustion engines existed in a wide variety of shapes and combinations of components of which the informed user of such an engine, who had some knowledge

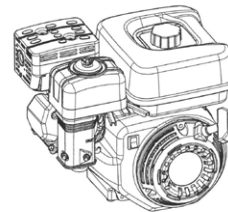


Henning Hartwig

of the relevant industrial sector, was aware. Finally, the Court supported the Board of Appeal's view that the overall impression of the challenged design was principally determined by the general appearance of the upper side of the engine, and by the arrangement of the various components, their shape and size in relation to each other, and not by a multitude of technical details. Consequently, the shape, dimensions and arrangement of the various components of the internal combustion engine were more important than differences in details, said the Court. The challenged and the prior design as shown above right produced identical impressions on account of the shape and arrange-



Prior design



Challenged design

ment of their principal components and the same basic structure: "An informed user will be guided by the basic structures alone and not by differences in the details, which do not produce different overall impressions on him."

---

## Remarks

---

The key lesson to be taken from the above is the manifestation of a clear interaction and interdependency between the designer's freedom in developing the challenged design (Article 6 [2] CDR), on the one hand, and the weight (minor or major) that differences between two designs are given when determining their (same or different) overall impression (Article 6 [1] CDR) on the other. While the General Court already held in March 2010 that the "more the designer's freedom in developing the contested design is

restricted, the more likely minor differences between the designs at issue will be sufficient to produce a different overall impression on the informed user", these considerations related to the infringement test under (the identical) Article 10 CDR, not to the validity test under Article 6 CDR (cf. BARDEHLE PAGENBERG IP Report 2010/I). Now the Court extended this reasoning, in line with case law, for instance, from Germany (cf. BARDEHLE PAGENBERG IP Report 2010/V), reciprocally to the issue of validity.

### IMPRINT

The "BARDEHLE PAGENBERG IP Report" is published by BARDEHLE PAGENBERG  
Prinzregentenplatz 7, 81675 München  
T +49.(0)89.928 05-0  
F +49.(0)89.928 05-444  
www.bardehle.com

### Editors:

Dr. Henning Hartwig  
Dr. Tilman Müller-Stoy

© 2011 BARDEHLE PAGENBERG

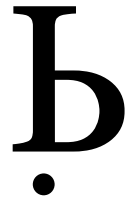
All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, mechanical, photocopying, recording or otherwise, without prior permission of the publishers.

Nothing in this publication constitutes legal advice.

BARDEHLE PAGENBERG assumes no responsibility for information contained in this publication or on the website www.bardehle.com and disclaims all liability with respect to such information.

# IP Report 2011/III

## Offices



### **München**

Prinzregentenplatz 7  
81675 München  
T +49.(0)89.928 05-0  
F +49.(0)89.928 05-444  
info@bardehle.de

### **Düsseldorf**

Breite Straße 27  
40213 Düsseldorf  
T +49.(0)211.478 13-0  
F +49.(0)211.478 13-31  
info@dus.bardehle.de

### **Paris**

10 Boulevard Haussmann  
75009 Paris  
T +33.(0)1.53 05 15-00  
F +33.(0)1.53 05 15-05  
info@bardehle.fr

### **Barcelona**

Avenida Diagonal 420, 1º 1ª  
08037 Barcelona  
T +34.93.4 57 61 94  
F +34.93.4 57 62 05  
info@bardehle.es

[www.bardehle.com](http://www.bardehle.com)