



Press release dated October 6, 2017

BARDEHLE PAGENBERG successful for adidas in opposition appeal proceedings against a European patent of Nike

The patent-in-suit EP 1 746 909 of competitor Nike relates to a garment with zones of different air permeability which are to be determined using a certain measurement device. Such garments are worn during sports activities as the selective heat dissipation and ventilation supports the body's heat regulation.

During opposition proceedings, when a public prior use of former adidas soccer jerseys was examined, it became apparent that the measurement device required by the independent claims was globally no longer available. Thus, a ground for opposition of a lack of the possibility of performing and repeating the invention had been asserted and the Opposition Division of the European Patent Office had revoked the patent-in-suit by decision of April 4, 2013.

In response to this decision, patent proprietor Nike lodged an appeal. However, the appeal was unsuccessful because the Board of Appeal 3.2.06 of the European Patent Office concurred with the line of argument that the lack of availability of the measurement device mentioned in the independent claims prevents the skilled person from performing and repeating the invention, i.e. from manufacturing the claimed garment. The appeal was dismissed and the patent effectively revoked with the decision announced in the oral hearing of September 7, 2017.

Representatives of adidas AG:

BARDEHLE PAGENBERG (Munich)

Dr. Hans Wegner (German and European Patent Attorney, Partner)

Dr. Christian Haupt (German and European Patent Attorney, Partner)

Representatives of Nike International Ltd.:

Withers & Rogers LLP (Munich, London)

Adrian George Tombling (Patent Attorney, European Patent Attorney, Partner)

Justin Wilson (Patent Attorney, European Patent Attorney, Senior Associate)

BARDEHLE PAGENBERG

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

BARDEHLE PAGENBERG
Partnerschaft mbB
Patentanwälte Rechtsanwälte
Amtsgericht München
Partnerschaftsregister 1152
ISO 9001 certified

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Board of Appeal 3.2.06 (Munich):

M. Harrison (Chairman)

G. de Crignis (Rapporteur)

M.-B. Tardo-Dino

T. Rosenblatt

W. Ungler

Opposition Division (Munich):

A. Kising (Chairman)

B. Kleine (legally qualified member)

R. Uhlig

D. Iamandi

BARDEHLE PAGENBERG combines the professional expertise of attorneys-at-law, patent attorneys, professional representatives before the European Patent Office, specialized trademark lawyers and qualified technical consultants. Our consulting services are tailored to our clients' particular requirements and the specific circumstances of each case.

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Press contact:

Gabriela Tröger

Marketing & PR

Prinzregentenplatz 7

81675 Munich

T +49.(0)89.928 05-0

F +49.(0)89.928 05-444

gabriela.troeger@bardehle.de

www.bardehle.com