



M I C H A L S K I · H Ü T T E R M A N N
& P A R T N E R

Amended
Patent Nullity Proceedings
in Germany

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Infringement Action and Nullity Action

- In Germany, infringement and nullity are handled in separate proceedings.
- If no opposition against a patent is possible any more (3/9 month after grant), invalidation of a patent is only possible by a nullity action.
- In general, a nullity suit is only filed in response to an infringement suit.

- Infringement (patent attorney + attorney-at-law):
 1. District Court
 2. Higher District Court

- Nullity: Federal Patent Court (patent attorney):
 1. Federal Patent Court
 2. Federal Supreme Court



Reasons for Nullity

- Lack of novelty
- Lack of inventive step
- Lack of industrial application
- Lack of enabling disclosure
- Usurpation (unlawful deprivation)
- Extension over the original disclosure



Proceedings until 2009

- Nullity suits : approx. 240 per year
- Appeals to the Federal Supreme Court: approx. 70 per year
- Pending suits at the Federal Supreme Court: approx. 200 (9/2009)
- Durations:
 - Federal Patent Court: 19 months
 - Federal Supreme Court: 48 months
 - In total 67 months = **more than 5 years**



Amendments to the Nullity Proceedings

- In force since October 1, 2009
- For accelerating the proceedings
- Especially by taking work load from the Federal Supreme Court
- Solution:
 - Finding of facts only at the Federal Patent Court
 - Federal Supreme Court only responsible for legal revision
 - Possible since „novelty“ and „inventive step“ are a legal questions, not finding of facts



Implementation

- Duty of notice for the Federal Patent Court:
 - Everything which is relevant for the decision must be presented
 - If not presented by the parties, the court asks for presentation
- This duty of notice goes far beyond the duty of notice in civil law suits
- For the decision, the court is bound to their statements in any notice
- The court sets deadline for presenting facts;
late filed facts and arguments may not be considered



Consequences

- For stay of an infringement suit, immediate filing of a nullity suit is necessary.
- If relevant prior art for nullity is only found later, this might be considered as late filing and will not be considered by the court any more.
- Accordingly, if your competitor's patent „really bothers you“:
 - Consider filing an opposition
 - At least do a search on the competitor's patent
- If nullity suit cannot be avoided, choose a patent law firm that can handle high workload in short time.

Thank you very much for your kind attention.



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