France

“Device for Mounting the Rear Shelf of a Car”

Intellectual Property Code, Art. L. 614(3) – *Trèves SA v. Silac SAS, Simoldes Plasticos France SARL et Renault SAS*

Decision of the Supreme Court (Cour de cassation)

18 October 2011

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Once a French patent has been substituted by the French part of the European patent that claimed priority from such French patent, the patentee can no longer invoke the French patent in infringement proceedings even where the European patent has been revoked.

According to Art. L. 614-13(3) Intellectual Property Code, the revocation of a European patent does not affect the substitution by the French patent (original filing) with the French part of the European patent. As after revocation of a patent, the latter ceases to exist, the court of appeal correctly upheld the first instance decision having found that the revocation of the European patent held by the Trèves Company and taking effect on 31 December 2001, that is, after the French patent (original filing) was substituted by the European patent, could not retroactively have an impact on the above-mentioned substitution that occurred on 29 September 2000, date of expiration of the period for opposition.