Germany

“MPEG-2 Video Signal Encoding” (MPEG-2-Videosignalcodierung)

Patent Act, Secs. 9 second sentence No. 3, 10(1)

**Decision of the Federal Supreme Court (Bundesgerichtshof)
21 August 2012 – Case No. X ZR 33/10**

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- a) A sequence of video data representing video images can be required to be considered as a direct product of a manufacturing method and as such enjoy product protection pursuant to Sec. 9, second sentence, No. 3, of the Patent Act.
- b) If a sequence of data must be considered as a direct product of a video image encoding method, the product protection also encompasses a data carrier on which the data sequence derived in accordance with the invention has been saved, or which represents a copy of such a data carrier.
- c) If such a data carrier (here: digital video master tape) has been put into circulation with the consent of the patent proprietor, the manufacture of further data carriers (here: DVDs) containing the sequence of data encoded according to the invention still falls within the right to use that sequence of data as intended which follows from the exhaustion of the patent right.
- d) The delivery of data carriers with the sequence of data as per the invention, which is not illegal because done by the patent proprietor by making the data sequence available in the framework of a test order, can give rise to the risk of future patent-infringing activity if the supplier acts without knowledge of the exhaustion.
- e) An optical data carrier containing data that can be transformed into video image data by means of a patent-protected decoding method does not on the mere grounds of this capability represent a means relating to an essential element of the decoding method.

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Official headnotes.