Germany

“Pivoting Seat” (Sitzgelenk)

Decision of the Federal Supreme Court (Bundesgerichtshof)
13 May 2014 – Case No. X ZR 25/13

Patent Act, Sec. 110; Code of Civil Procedure Secs.
269(1), 516(1)

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Keywords Patent revocation action withdrawal · Withdrawal during appeal proceedings · Consent of intervener

An appeal can only be withdrawn as long as the appeal proceedings have not yet been terminated.

- (a) A patent revocation action can also be withdrawn in the appeal proceedings without the defendant’s consent (upholding Federal Supreme Court decision of 22 June 1993 – X ZR 25/86, 1993 GRUR 895 – *Hartschaumplatten*).
- (b) The withdrawal of the action by the main party does not require the consent of an intervener acting on the plaintiff’s side in the litigation even if the latter is to be regarded as a joined party pursuant to Sec. 69 of the Code of Civil Procedure (confirmation of Federal Supreme Court decision of 22 December 1964 – *Nebenintervention*).

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