Germany

“Forced Action Mixer” (Zwangsmischer)

Decision of the Federal Supreme Court (Bundesgerichtshof)
2 December 2014 – Case No. X ZR 151/12

Patent Act, Sec. 117; Code of Civil Procedure, Secs.
529(1) No. 2, 531(2) first sentence No. 3

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Keywords Patent nullity proceedings · Subject matter of the patent at issue · Obvious to the person skilled in the art · Auxiliary request · Admission of a new ground for objection

1. A plaintiff who claims in patent nullity proceedings that the subject matter of the patent at issue was obvious to the person skilled in the art must show that the state of the art included technical teaching from which the person skilled in the art could use his expertise to develop the subject matter of the invention. He must also show the technical and other factual aspects from which the patent court is to draw the legal conclusion that the person skilled in the art also had occasion to pursue the path objectively made possible for him on the basis of his expertise and skills.

2. If the patent court holds that the patent at issue is legally valid in the version of an auxiliary request that the defendant only submitted during the oral proceedings following an indication by the court, a new ground for objection that is alleged to derive from the technical information of a document only cited at second instance is to be admitted if it was not apparent to the plaintiff from the indication that the patent court regarded the subject matter of the auxiliary request as (possibly) patentable.

DW

Official headnotes.