Germany

“Polymer Foam II” (Polymerschaum II)

Decision of the Federal Supreme Court (Bundesgerichtshof)

9 June 2015 – Case No. X ZR 101/13

European Patent Convention, EPC Art. 69(1);

Patent Act, Secs. 14, 38

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Keywords Review of unlawful extension · Determination of subject matter

- a) The review of an unlawful extension must be preceded by a construction of the patent claim to be reviewed in order to determine the semantic content and in particular the contribution made by a disputed feature to the achievement of the invention.
- b) The determination of the subject matter of an invention cannot be waived on the grounds that a feature is unspecific and (hence) unsuited for distinguishing the invention from the state of the art [citation omitted].

DW

Official headnotes.