

Germany

“Fiberglass II”

**Decision of the Federal Supreme Court (Bundesgerichtshof)
15 December 2015 – Case No. X ZR 30/14**

**European Patent Convention, Art. 69;
Patent Act, Sec. 14**

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Keywords Manufacture of a patent-infringing product · Liability · Measures to avoid infringement of third party technical industrial property · Company legal representative · Detailed submission or findings of the representative’s actions · Culpable misconduct

- a) If a firm offers for sale or places on the market a product for a particular intended use when the sale of this product for that use is only legally admissible under certain conditions serving to protect human health, under normal circumstances that firm thereby signifies that it considers these conditions to be fulfilled.
- b) If the distribution of a product for a certain intended use is only legally admissible with a health-related warning notice, then a firm offering such a product for sale or placing it on the market for this intended use without such a notice is under normal circumstances signifying that it considers the product to be marketable without a warning notice.
- c) The legal representative of a company that manufactures a patent-infringing product or is the first to place it on the domestic market is liable to compensate the infringed party for damages if that representative fails to carry out possible and reasonable measures to set up and direct the business activity of the company such that no technical industrial property rights of third parties are infringed.
- d) For the assumption that the culpable infringement of a patent by a company that manufactures a product or introduces it into the domestic market is based on culpable misconduct of that company’s legal representative there is as a rule no need for detailed submission by the plaintiff or detailed findings on the part of the presiding judge concerning the relevant actions of that representative.

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