Case note: Higher Regional Court Düsseldorf – “Infusionsvorrichtung” (Decision of 08.04.2021 – 2 U 41/20)

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> On the limitation of functional interpretation by cited prior art.



With its “Infusionsvorrichtung” Decision, the HRC Düsseldorf once again specified the principles of functional interpretation.

I. In a decision of 8 April 2021 (2 U 41/20), the Higher Regional Court (HRC) Düsseldorf commented on limitations of the functional interpretation. Subject matter of the proceedings was a patent in suit relating to an infusion device, for example for diabetics. According to claim 1 of the patent in suit, the device comprised a housing containing an exit port assembly, a dispenser, a local proces-

sor, and a wireless receiver. The housing was free of user input components for providing flow instructions to the local processor according to the claim.

The alleged attacked device was an insulin pump comprising a pump base and a disposable patch container. The pump base included the processor and wireless receiver, and the disposable patch container included the pump and needle.

The Regional Court (RC) Düsseldorf ruled in first instance that the attacked device did not make use of the teaching of the patent in suit. The Court stated that the patent in suit set forth a one-piece, non-destructively disassemblable outer casing that, in any event, included an exit port assembly, a dispenser, a local processor, and a wireless receiver. The device components named in the claim had to be provided in the same spatial configuration. In support of this interpretation, the RC Düsseldorf cited the description, which referred several times to "one" or "the" housing and did indeed refer at several points to a multipart design inside the device, but not with regard to the housing. From a functional point of view, the requirement for the housing to be in one-piece resulted from the fact that the outer surface of the housing had to be smooth and easy to clean and needed to be a disposable article. Moreover, the patent description did not contain any statement as to how the device components were to be distributed over several housing parts. Finally, Plaintiff had made statements in the direction of a one-piece housing for the purpose of differentiation from the prior art in the granting procedure.

Ⅱ. The HRC Düsseldorf also denied an infringement, but came to this conclusion by a different approach. As a result, the teaching of the patent in suit only encompassed designs in which all components were housed in a uniform housing that was not composed of several individual housing parts.

However, in contrast to the RC Düsseldorf, the HRC stated:

> *"If one applies the usual rules of patent interpretation, there is still no reason to assume that the housing of the insulin pump must necessarily be one-piece and cannot – as in the attacked device – be multi-part."*

According to the opinion of the HRC Düsseldorf, the wording of the claim did not provide any indication that the housing had to be made in one piece. It mere-

ly specified that the housing had to comprise the designated components and be free of user input components.

Functionally, the teaching of the patent in suit aimed at reducing the size, complexity, and cost of an infusion device and providing it in form of a disposable product. In addition, the device should have smooth surfaces to facilitate cleaning and avoid surfaces of attack. However, the patent in suit merely described these aspects as advantages of the invention, without directly reflecting them in the claim. The claim was silent as to how the teaching achieved the disposable character. With regard to the smooth surface, the claim only stated that the housing should be free of user input components, from which, however, no general consequence could be derived that seams in the housing were to be avoided. Finally, the patent in suit itself provided for a detachable battery door, for example in Fig. 7.

As a result, the interpretation initially suggested that a multi-part housing was also in line with the claim.

However, the HRC Düsseldorf then refers to the cited prior art. It was undisputed between the parties in the opposition proceedings that the cited prior art disclosed all features of claim 1. In the opinion of the HRC Düsseldorf, the only difference was that the prior art provided for a two-part arrangement, the upper part of which accommodated the processor, the receiver and the pump and the lower part which accommodated the insulin container and the injection needle. This circumstance had to be taken into account when interpreting the claim. There was no infringement of the principle that a patent must not be interpreted according to what was assumed to be legally valid, since it was not a question of anticipating objections to the validity of the patent, but of identifying the teaching that had been granted.

Finally, the HRC Düsseldorf concludes:

> *"Therefore, such embodiments must be excluded from the scope of protection – irrespective of their technical-functional usefulness for the purposes of the invention – which can only be subsumed under the literal sense of the patent claim if an understanding of the term is taken as a basis, according to which the granted version of the claim would*

> *have been taken in a manner detrimental to novelty by the prior art assessed in the patent specification."*

Ⅲ. Functional interpretation is an elementary component of the interpretation of patent claims. According to the established case law of the Federal Court of Justice (Bundesgerichtshof, FCJ), the decisive factor for the interpretation of a patent is not the linguistic or logical-scientific meaning of the terms used in the patent claim, but their technical meaning, which is to be determined taking into account the object and solution as they objectively result from the patent. The meaning of a patent claim in its entirety and the contribution of the individual features to the performance of the patented invention are decisive. It must be deduced from the function of the individual features in the context of the patent claim which technical problem these features actually solve individually and in their entirety (FCJ GRUR 2016, 169 et seq. – Luftkappensystem).

It is well known that the functional interpretation of the claim in case of spatially-physically defined features must not lead to their content being reduced to mere function and the feature being interpreted in a sense that is no longer consistent with the spatially-physical design as inherent in the feature (HRC Düsseldorf GRUR-RR 2014, 185 – WC-Sitzgelenk).

With the present decision, the HRC Düsseldorf supplements this case law to the effect that the functional interpretation of the claim must further not lead to the claim covering embodiments known in the prior art that are contrary to the novelty of the teaching.