

## GERMANY

**Protecting and enforcing data formats for the IoT**

Maiwald Patentanwälte

Munich



Simon Lud

In Germany, products that are directly obtained by a patent-protected process are entitled to patent protection according to Section 9, Sentence 2 (3) PatG, even if a claim directed to the product is lacking in the patent. To obtain extended protection, according to German practice, it is a necessary condition that the product as such would at least be accessible to patent protection.

In the reported decision BGH – X ZR 124/15 – *Rezeptortyrosinkinase II*, the German Federal Court of Justice (Bundesgerichtshof, BGH) resolved the question of allowing product protection for data directly obtained by a patent-protected process. Thus, the BGH had to rule on the issue of technical character and patentability of data, an important aspect of the discussion about patent eligibility of computer-implemented inventions in general.

The BGH stressed in its decision that a sequence of data can only be considered as a patent-infringing product which has been produced directly by a patent-protected process if the product has tangible and technical characteristics that have been induced by the process. In particular, the BGH considered that technical character is not to be awarded for data as a set of values providing information contents and in the case in question the court denied infringement. However, the BGH stated that a data format is technical and, therefore, eligible for patent protection. The decision follows the approach adopted in earlier court rulings affirming the technical character of data structures and file formats, as provided by BGH – X ZR 33/10 – *MPEG-2-Videosignalcodierung*. The decision is furthermore in line with case law of the European Patent Office according to which a computer-implemented data format is deemed to have technical character (T 1194/97).

A first conclusion to be drawn from the BGH – X ZR 124/15 decision is that it is worth claiming data structures or file formats when drafting a patent application, since data structures or file formats comprise technical character.

Second, when enforcing patent claims related to data structures or file formats, instead of enforcing claims directed to network entities or to systems, complicated issues such as joint, divided or indirect infringement might become obsolete. Although multiple actors or network elements may be involved in a distributed computing environment, data structures and file formats are basically used and processed by each actor or network element independently, an aspect which essentially simplifies resolving patent infringement disputes in complex network environments of connected and smart devices, such as the Internet of Things.