

GERMANY



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One person can sue for nullity twice

In nullity suits before the German Federal Patent Court, the verdict of the Court has a binding legal effect on the parties involved. Thus, the nullity plaintiff having lost a suit cannot file a further nullity suit against the same patent for the same reasons. The legal effect of the Court's verdict is supposed to finally settle the dispute between the parties involved and an exception to this rule can only be acknowledged under very specific exceptional circumstances.

The German Federal Supreme Court recently ruled on a case where the managing director and sole shareholder of a company that filed the nullity suit against a patent had already filed an unsuccessful first nullity suit against the same patent in the name of a different company, of which he was also the owner, a few years earlier. The Patent Court rejected the second nullity suit as being inadmissible, and argued that despite the fact that the second nullity suit had been filed in the name of a different legal entity, from an economic perspective the plaintiff company and its only shareholder have to be seen as one person.

The Supreme Court overruled this and sent the case back to the Patent Court for further handling. The Supreme Court argued that the code of civil procedure only allows for a legal effect of a verdict for and against the parties and their legal successors. It was further stated that a legal effect exceeding this rule can only be based on a provision by law, which did not apply to the case in question. The Supreme Court concluded that the legal effect of a prior negative nullity verdict against one corporate entity and against its sole proprietor cannot be held against another corporate entity of the same sole proprietor.

The Supreme Court's decision may become practically relevant in cases where, after refusal of a first nullity suit, further prior art is found which questions the patentability of the attacked patent.