

GERMANY

BPatG judges have adequate technical expertise

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appointing experienced, technically qualified judges to the Federal Patent Court.

Patent practitioners have always known it: the judge is finally the expert. In a recent decision (X ZB 19/20), the German Federal Supreme Court (BGH) emphasised that the judges of the German Federal Patent Court (BPatG) do have sufficient technical knowledge, and knowledge gained by experience in their field of expertise, to allow them to decide patent cases without the need to obtain external expertise (in the form of an expert opinion from an independent technical expert). Thus, the technically qualified judges of the BPatG may decide patent cases falling in their area of responsibility without external technical expertise.

The claimant in the decision pleaded a violation of their right to be heard, based on the argument that the BGH did not obtain an external expert opinion to reach a decision to reject the patent application. The BGH clearly stated that a violation of the right to be heard can, in principle, only occur if it is shown in detail by the claimant why, based on the facts of the case, obtaining an expert opinion would have suggested itself to the technical judges.

The question of inventive step in the decided case was not complicated enough to render an external opinion necessary, the BGH concluded. However, the BGH also stated that this does not exclude the eventuality that in a specific case, a technical expert opinion can, and probably should, be obtained, if technical questions arise in some parts of the judges' technical field of expertise where they do not have sufficient technical knowledge to decide the case readily.

By taking the decision, the Supreme Court has, once again, emphasised the efficiency and cost advantage of the German system, which results from